

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

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AMERICANS UNITED FOR :
SEPARATION OF CHURCH AND :
STATE, et al., :
 :
Plaintiffs, :
 :
vs. :
 :
PRISON FELLOWSHIP :
MINISTRIES, et al., :
 :
Defendants. :
----- X

Civil No. 4:03-cv-90074

TRIAL TRANSCRIPT

VOL. X

Second Floor Courtroom
U.S. Courthouse
East First and Walnut Streets
Des Moines, Iowa
Monday, November 28, 2005
8:30 a.m.

BEFORE: THE HONORABLE ROBERT W. PRATT, Judge.

ORIGINAL

ANN T. MOYNA - CERTIFIED SHORTHAND REPORTER

pleading # 347

APPEARANCES:

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P R O C E E D I N G S

(In open court.)

THE COURT: Good morning.

Mr. Luchenitser, my law clerk said you had some court-keeping matters you wanted to talk about.

MR. LUCHENITSER: Yes. The first matter is that Plaintiff Jerry Ashburn sent a letter to me in care of the Court. I wasn't in the office over Thanksgiving. He felt that was the best way to quickly get it to me. The letter was placed--the entire letter was placed on the Court's ECF filing system on Friday.

When that happened, I called the Clerk's Office and I asked them to address the issue. My understanding, I haven't actually checked this, but my understanding is Judge Gritzner ordered that it be placed under seal so that only the Court could see it.

We have two things that we would like to be done. First, if possible, we would like the letter to be removed from the file entirely. It's a matter of an attorney/client communication

THE COURT: I was out of town. Is it to the lawyer, not me?

MR. LUCHENITSER: It's a letter to me in care of the Court. He sent a cover letter and then there's a letter to me attached.

1 THE COURT: You're asking that your letter be given to
2 you?

3 MR. LUCHENITSER: Well, I already have a copy. I'm
4 asking that at least the letter that's to me be removed from the
5 Court file.

6 THE COURT: Okay. I don't see any reason that it
7 would be in the Court file. I haven't read it.

8 MR. TROY: Your Honor, I have. It was sent across the
9 Internet. I don't want to speak for Iowa, but two things; one,
10 Mr. Ashburn suggests that there was a note that he has given to
11 Mr. Luchenitser threatening him with wrong doing. And if that's
12 true, it's evidence of a crime, and we would ask Mr. Luchenitser
13 to hand it over.

14 Secondly, Mr. Ashburn is suggesting that he might
15 commit some violent act, and, consequently, I don't think it's
16 appropriate to keep it under seal and away from the prison
17 officials, nor to keep evidence of a crime out of the public
18 record.

19 THE COURT: Okay. Mr. Troy, when you say threatening
20 him with wrong doing, threatening Mr. Luchenitser?

21 MR. TROY: No, sir. There are two things.
22 Mr. Ashburn suggests that there is a note that he received
23 threatening he, Mr. Ashburn. If that's true, then it's
24 suggested that he gave it to Mr. Luchenitser. If that's true,
25 there is evidence of a crime at the hands of Mr. Luchenitser

1 that I respectfully suggest isn't something that should be held
2 in confidence.

3 Secondly, Mr. Ashburn himself is threatening to
4 apparently commit some sort of violent act, which is not
5 something, respectfully, that should be kept away from the
6 prison authorities.

7 THE COURT: I think that's true. Okay. Why don't I
8 read the letter, since everybody's, apparently, read it but
9 me, and we can have a conference at a break. Does that make
10 sense?

11 MR. LUCHENITSER: Yeah, Your Honor. I'm going to try
12 to set up a call with Mr. Ashburn. I don't know if it will be
13 possible, or not. I want to try to get some more information
14 from him as to who he wanted to see this letter.

15 THE COURT: Obviously, the threat is some security
16 breach. We want to prevent that.

17 Okay. Anything else?

18 MR. LUCHENITSER: Yes, Your Honor. The second issue
19 was Your Honor issued an order allocating ICN costs, and we paid
20 the--we gave the check to your deputy this morning.

21 And then Defendants last week filed a motion for
22 reconsideration of the allocation, and we respectfully would ask
23 permission to deal with that issue as part of the briefing, and
24 any attorneys fees and costs that follows entry of judgment,
25 because we think it would be wasteful to deal with it now

1 because who has to pay these costs may be affected by who is the
2 prevailing party; two, we would like to reserve the right to
3 modify the allocation.

4 THE COURT: Okay. It's been, I don't know if you've
5 seen the order, but it's been reconsidered and denied.

6 MR. LUCHENITSER: Okay. Thank you.

7 THE COURT: Ms. Wallace.

8 MS. WALLACE: Yes, Your Honor. We have seen the order
9 entered on the defendants' motion to reconsider. We would,
10 however, further object to any of the ICN that's currently
11 hooked up. Plaintiffs are currently watching these proceedings
12 via the ICN. That is being done, again, at Mr. Luchenitser's
13 request.

14 The defendants object. These plaintiffs have no
15 right to be at this trial. We would object not to them being
16 here, but to then in any way sort of fashion ever, win, lose
17 or draw, being assessed any costs for this. This is a waste
18 and the defendants should not have to incur the expense of the
19 ICN.

20 We never agreed to it. In fact, we informed
21 Mr. Luchenitser that that would be on his dime from the very
22 beginning. Mr.--Judge Shields, in the pretrial of this matter,
23 informed counsel that these plaintiffs do not have a right to be
24 in these proceedings via ICN or in person.

25 I just want to make sure, for the record, the

1 defendants have paid, as ordered by the Court, this morning,
2 after you ruled on our motion to reconsider, as ordered to
3 by the Court. But from heretofore forward, I want this record
4 to reflect that these Defendants object to any of these ICN
5 costs that they have not reserved being assessed to these
6 Defendants.

7 THE COURT: Okay. Well, I didn't know anything
8 about--I should have, it's nobody's fault. Judge Shields didn't
9 inform me of this until, I think we were in day seven or six, or
10 whatever.

11 Mr. Luchenitser, Counsel makes a good point.

12 MR. LUCHENITSER: Your Honor, first, we need these
13 Plaintiffs to be able to watch these proceedings because they
14 are very knowledgeable about what goes on in prison.

15 THE COURT: Let me interrupt. I don't doubt that.
16 Her point is, did Judge Shields at the pretrial bring this up,
17 that it would, quote, be on your dime?

18 MR. LUCHENITSER: I don't believe that was addressed.
19 I don't believe the issue of who would pay for the ICN, it was
20 not addressed. We reached an agreement with Defendants before
21 trial started that the plaintiffs would be allowed to watch the
22 defendants entire case. I don't believe the issue of costs was
23 addressed at all.

24 THE COURT: We've got a practical problem. The State
25 has no money. The Clerk's Office is being cut every day by the

1 Congress. I'm hard pressed to think that I can continue to run
2 somebody's tab without asking in advance. They don't have a
3 right. It's their lawsuit. They can be here. But it seems to
4 me that it's not like a criminal case where the accused has to
5 be here. They are plaintiffs.

6 Had you discussed this with them absent the use of the
7 ICN, or the security concerns?

8 I mean, generally when I have a conditions of
9 confinement trial I have six deputies, I think Ms. Wallace has
10 been here during some of those cases, or Mr. Allen. I know
11 there is a substantial expense there as well.

12 Have you discussed the plaintiffs being here absent
13 the use of the ICN?

14 MS. WALLACE: Yes, Your Honor.

15 MR. LUCHENITSER: Be here physically?

16 THE COURT: Yes.

17 MR. LUCHENITSER: Yes. The defendants would not agree
18 to bring them here physically, but they agreed to ICN.

19 MS. WALLACE: That's not true, Your Honor. The
20 defendants told Mr. Luchenitser that they would bring the
21 defendants to this trial, but on Mr. Luchenitser's dime.

22 MR. LUCHENITSER: I respectfully disagree with
23 Ms. Wallace's recollection. The defendants just said that they
24 would not voluntarily bring them here. They didn't discuss
25 costs, they said they didn't want to bring them in person, they

1 would do it over ICN.

2 THE COURT: I'm going to terminate the ICN.

3 THE COURTROOM DEPUTY: Cindy, Diane, we'll be turning
4 off the ICN now.

5 THE COURT: Okay. Mr. Troy, did you want to present
6 your case?

7 MR. TROY: Yes, Your Honor.

8 MS. WALLACE: Your Honor, if I may.

9 THE COURT: Yes.

10 MS. WALLACE: I have one further matter that I would
11 like to address with the Court before we begin.

12 During examination of several of the inmate witnesses
13 the Court suggested, and I believe it was a fruitful one,
14 suggested that the State produce for each inmate who has
15 testified, and who will be testifying, I believe that would be
16 Mr. Robert Robinson and Mr. Jessie Weise, their records with
17 regard to their sentence summary, their movement summary, as
18 well as their disciplinary summary.

19 I have compiled--the State has compiled those records
20 for each inmate who has testified or will be testifying. I
21 compiled those, put them in alphabetical order, and labeled them
22 Defendants' Exhibit F, as in Frank, 9. I would like to offer
23 them to the Court at this time.

24 (Defendants' Exhibit F9 was offered
25 in evidence.)

1 THE COURT: Is there an objection?

2 MR. LUCHENITSER: Your Honor, if I could confer with
3 my co-counsel.

4 Your Honor, we object. This is untimely. It should
5 have been produced during our case.

6 THE COURT: Here is my recollection of it.
7 Ms. Wallace, you tell me if I'm right. I think your first
8 cross-examination of one of the plaintiffs I suggested rather
9 than, there was a suggestion that, is it 609, whatever rule it
10 is, that says you can go back in a civil case so many years to
11 impeach. I don't remember the number of the rule.

12 I suggested that rather than cross on that, that you
13 give me the records. I think part of this was not only with
14 respect to credibility, but also the defendants position with
15 respect to recidivism rates, and that sort of thing.

16 I'm going to accept F9.

17 (Defendants' Exhibit F9 was
18 received in evidence.)

19 THE COURT: Mr. Troy.

20 MR. TROY: Yes, Your Honor.

21 Your Honor, can you hear me okay?

22 THE COURT: I can. I can.

23 MR. TROY: I didn't know whether to put that--one
24 preliminary matter, if I may address the Court, which is simply
25 to give a one-minute overview. I will tell the Court, if I may,

1 that as we indicated prior to the break, during the break, but
2 for responding to some additional motions filed by the
3 plaintiffs, we did try to streamline our case.

4 In doing so, we will present to the Court some
5 witnesses representing the Innerchange Freedom Initiative
6 demonstrating the nature of the program and the goals to be
7 achieved. Some State witnesses, which will articulate the
8 State's needs in how the program meets those needs. Two, I
9 believe, perhaps three, right now two, inmates, IFI inmates, so
10 the Court can see inmates who have gone through the program and
11 what was accomplished. In doing that, that's what we will be
12 presenting.

13 One matter, however, in trying to streamline the case
14 and analyzing the testimony to date, we determined that we will
15 not be calling, will not need, Mr. Jerry Wilger. Mr. Wilger is
16 no longer, Your Honor, an employee or a consultant, has no
17 connections with IFI. He resides in Durango, Colorado, outside
18 of the subpoena jurisdiction of the Court.

19 We don't have the ability to force him to be here.
20 With traffic, the airline traffic, and everything, it's quite
21 expensive to try to get him here. He was trying to get here and
22 could not get airlines. Last night we made the final decision
23 that we would not be needing him.

24 We have no objection, however, because I know that
25 when I stood here before we indicated that if we called

1 Mr. Wilger, we had no objection to Mr. Luchenitser going
2 beyond the scope of direct.

3 We have no objection to Mr. Luchenitser, if he wants,
4 to take the seven-hour deposition of Mr. Wilger and use all or
5 parts of that for the record. Provided, of course, that we
6 would have the opportunity to cross designate if Mr. Luchenitser
7 chose not to put in the entire transcript.

8 THE COURT: All right. That's fine, Mr. Troy. Thank
9 you very much.

10 Should I plan, I know you can't speak for Ms. Wallace
11 or Mr. Allen, does it appear that your case would take most of
12 the week, do you think?

13 MR. TROY: We would hope, Your Honor, to be through by
14 the end of the week, if not before.

15 THE COURT: All right. Great. Thanks so much.

16 MR. LUCHENITSER: Your Honor, could I speak about the
17 ICN issue some more?

18 THE COURT: Yes.

19 MR. LUCHENITSER: Can we get the ICN if we pay for it?
20 Let me make sure--

21 THE COURT: That's what the Clerk tells me.

22 MR. LUCHENITSER: So to understand your ruling, if we
23 want them on ICN we have to pay for the whole thing.

24 THE COURT: Well, according to the discussion that
25 happened at the pretrial, that was the understanding.

1 MR. LUCHENITSER: I mean, that's not--

2 THE COURT: If we can somehow--it's the case that--
3 the plaintiff parties obviously have an interest in this. It
4 seems to me if you want to bring them here, consistent with
5 working that out with the State, I'm up for that. If you want
6 to pay for them to view via ICN, I'm for that as well. I can't
7 very well ask the State to continue to pay for it, or you, for
8 that matter. I mean, I feel like I got somehow blindsided on
9 this.

10 To answer your specific question, if you want this
11 week, however long this continues, the plaintiffs to be able to
12 view this, you've got to pay for it.

13 MR. LUCHENITSER: Will we have the right to move
14 that the cost be taxed against the defendants if we win at the
15 end?

16 THE COURT: You can ask for costs, and if the case law
17 is such that the prevailing party would normally receive those,
18 I think that you would receive those.

19 MR. LUCHENITSER: Okay. In that case we would like to
20 turn it back on and we would like to have them watch.

21 THE COURT: Okay. Are you going to pay for it?

22 MR. LUCHENITSER: We will for now, but we will ask--we
23 will intend to ask, if we win, that the costs be taxed against
24 the defendants.

25 THE COURT: All right.

1 MR. TROY: Your Honor, that's fine. I do think--I
2 think I recall some Fourth Circuit, I don't know in the Eighth
3 Circuit, that if he does do that that's on his tab and it's not
4 awarded on costs.

5 THE COURT: Yeah. I have no idea what the law is.

6 MR. TROY: I understand.

7 THE COURT: I don't want that to go farther than just
8 that subject, but I have no idea what the law is.

9 MR. TROY: I did not construe it that way.

10 MR. ALLEN: I wrote it down.

11 MR. TROY: Your Honor, while we're doing that, we
12 would call Mr. Norman Cox.

13 THE COURT: Would you please raise your right hand and
14 be sworn.

15 NORMAN ROSS COX, DEFENDANTS' WITNESS, SWORN

16 THE COURT: Mr. Troy, I have been informed that to get
17 it back on will take about five minutes and that Mr. Moorlach
18 has to make a phone call. Why don't we just wait. Do you want
19 to make your phone call and I will just--

20 MR. LUCHENITSER: Your Honor, while we're waiting, for
21 the record, Exhibit F9 that Ms. Wallace just presented to you,
22 we believe there are some--

23 THE COURTROOM DEPUTY: Patti, this is John Moorlach.
24 We need to go back to Newton. Is our session still on?

25 MR. LUCHENITSER: Your Honor, for the record, this

1 Exhibit F9 Ms. Wallace just offered, we also want to object
2 to--some of the information in there seems to be either old
3 criminal convictions that are not admissible under Rule 609 or
4 there is disciplinary records that we would object to on the
5 basis of relevance. We want to make that objection for the
6 record.

7 THE COURT: All right. You may do so. I will take it
8 under advisement.

9 THE COURTROOM DEPUTY: Ms. Wallace, Warden Mapes, I
10 think we need to have Newton connected.

11 THE COURT: Warden Mapes, I want to thank you for
12 accommodating all of us at your facility. That was very
13 professional. I, for one, appreciate it. I know it's a lot of
14 work to do, the security necessary to have this visit. You were
15 very accommodating and I really appreciated it.

16 WARDEN MAPES: Thank you, Your Honor.

17 MR. TROY: Your Honor, while we're waiting, I know the
18 Court has expressed an interest in background. I'm going to go
19 into detail with Mr. Cox. I handed out a copy of his resume,
20 which I think might be helpful, without objection. I don't know
21 if there is any.

22 MR. LUCHENITSER: No objection, Your Honor.

23 THE COURT: All right. Thank you very much.

24 MR. LUCHENITSER: Your Honor, would it be okay to
25 start this witness while we're rounding up Newton?

1 THE COURT: That's fine.

2 Mr. Troy if you want to proceed.

3 DIRECT EXAMINATION

4 BY MR. TROY:

5 Q. Good morning, Mr. Cox.

6 A. Good morning.

7 Q. Mr. Cox, please introduce yourself to the Court, identifying
8 yourself by name and address and your position with the
9 InnerChange Freedom Initiative.

10 A. My name is Norman Ross Cox, Jr. I live at 2029 Weltown Road
11 in Clear Brook, Virginia. I work for Innerchange Freedom
12 Initiative. I'm a vice-president with Prison Fellowship, and
13 I'm assigned full-time as the national director of the IFI
14 program.

15 Q. And Clear Brook, Virginia, where is that located in
16 Virginia?

17 A. About eight miles north of Winchester in the Shenandoah
18 Valley.

19 Q. All right. That's what is called roughly northern Virginia,
20 which is near the headquarters of the IFI/Prison Fellowship
21 Ministries?

22 A. Yes. The headquarters is located in Lansdowne, Virginia,
23 which is about four miles from Clear Brook, Virginia.

24 Q. How long have you been the national director of the
25 InnerChange Freedom Initiative?

1 A. About 19 months. Since February of '04.

2 Q. And we'll get into this in more detail. As the
3 vice-president--excuse me--national director of InnerChange
4 Freedom Initiative, or IFI, if I may, what is your general
5 duty?

6 A. Well, I have general management and supervisory duties for
7 the staff that are assigned to the IFI program for Prison
8 Fellowship.

9 Q. I believe the record is that there are currently four IFI
10 programs in operation.

11 A. That's correct.

12 Q. And they are in the states of--

13 A. Tennessee, Minnesota--

14 Q. Tennessee or Texas?

15 A. Texas. I'm sorry. We're going to be in Tennessee in a
16 couple of weeks. Texas, Minnesota, Iowa, Kansas.

17 Q. Are also part of your responsibilities overseeing the
18 establishment of any new programs?

19 A. Yes. We have been awarded contracts in the State of
20 Arkansas and the State of Missouri.

21 Q. So that would be six programs overall once operational?

22 A. That's correct.

23 Q. All right. You have a copy of what I have marked and handed
24 to the Court and Defendants--excuse me--Plaintiffs' as Cox
25 Exhibit No. 1.

1 A. Yes, I do.

2 Q. Mr. Cox, can you basically give the Court a little
3 background on your education. Do you have college degrees, and,
4 if so, from what institution and when did you receive them?

5 A. Yes. I have an undergraduate degree from Virginia
6 Polytechnic Institute and State University. I completed that
7 degree in 1966 and my major was history and minor in political
8 science. I have a master's degree in criminal justice from
9 Auburn University. I received that in 1976.

10 Q. Once you graduated from Tech, Virginia Tech, what did you
11 do?

12 A. Well, I went into the United States Army for four years. I
13 went to officers candidate school. I went to military
14 intelligence school and served in Europe and Vietnam.

15 Q. Did you receive an honorable discharge?

16 A. Yes, sir, I did.

17 Q. And when?

18 A. 19--March, I believe, of 1971.

19 Q. All right. Up until that time you had a degree in history
20 and political science, you served in military intelligence. Did
21 you have any experience in the criminal justice system?

22 A. Only in college. As part of my extracurricular activities I
23 served with the honor court. I was a member of the cadet corp
24 at VPI. I served as defense attorney and assistant defense
25 attorney, sergeant-at-arms--not in that order, in reverse order.

1 My senior year I was chief justice.

2 Q. And that's with the school's honor system?

3 A. That's correct.

4 Q. That honor system has some national prestige; is that
5 correct?

6 A. That's correct.

7 Q. All right. According to Cox Exhibit No. 1, approximately
8 1971 you started to get involved in the criminal justice system.
9 Explain to the Court how you got involved and the progress of--
10 how your career progressed.

11 A. Well, when I came out of the military I was a captain and
12 was ready to go to work and couldn't find a job. I answered an
13 ad in the newspaper for a vocational counselor. I was hired and
14 found myself working in a job development program for probation
15 and parolees.

16 Q. Who was your employer?

17 A. The Virginia Probation and Parole Board.

18 Q. And how long did you remain in that position and what duties
19 did you have in that position?

20 A. Well, I began as a vocational counselor. I administered
21 certain vocational tests. I worked with inmates to identify
22 job opportunities that matched their potential and their
23 skills. I worked about six months in that position when my
24 supervisor resigned and I became supervisor of one other
25 counselor.

1 Then I was assigned responsibility for grant
2 management for--actually, I was given responsibility to write a
3 renewal grant for the program that hired me. I did so and it
4 was successfully awarded. Suddenly I was a grant officer for
5 the Virginia Probation and Parole Board. I was actually taken
6 out of that job development program and remained planning
7 supervisor of the board for several years.

8 As planning supervisor I oversaw the opening of the
9 first halfway house in Virginia.

10 Q. The first--

11 A. The first.

12 Q. --halfway house?

13 A. Halfway house; correct.

14 Q. You indicated that you were dealing with return-to-community
15 issues?

16 A. That's correct.

17 Q. And then grant--who was the grant application made to?

18 A. Well, it was to--it was a justice department grant. At that
19 time the law enforcement assistance administration was very
20 active in terms of supporting programs in the criminal justice
21 area. The Virginia Probation and Parole Board had six active
22 grant programs, one of which was to initiate the halfway house
23 program for the state.

24 Q. And is this the interfacing that occurs among all the states
25 when the Department of Justice was handing out money to be

1 delivered through a state agency that had to be created?

2 A. That's correct. All states had the same access to those
3 federal funds through an agency within the state that was
4 created for that purpose.

5 Q. What was the agency in Virginia called?

6 A. The Virginia Law Enforcement Assistance Association.

7 Q. All right. Assistance Authority?

8 A. Authority. That's correct.

9 Q. And there were similar such authorities throughout--

10 A. Throughout the country.

11 Q. --throughout the various states throughout the country; is
12 that correct?

13 A. Yes. That's correct.

14 Q. Once you started and were successful in the grant in
15 establishing the halfway house, did you also get involved
16 with any pre-release centers, and, if so, explain that to the
17 Court?

18 A. While I was still working for the probation and parole board
19 there was some difficulties in the work release program. And so
20 the chairman of the parole board assigned me to do a review of
21 the work release and pre-release program for the state. That
22 was administered by the Department of Welfare and Institutions,
23 which later became the Department of Corrections.

24 I did that study. It took me about 30 to 45 days to
25 do the study and get it published. Then about a month after

1 that the director--the new director of corrections--they were in
2 the process of splitting those two agencies--asked if I would
3 come and take over the program. I had the opportunity to
4 implement my own recommendations.

5 Q. And did you?

6 A. I did, yes.

7 Q. And as a result of that, what was established?

8 A. I'm sorry. I'm not sure--

9 Q. Were there--in addition to halfway houses, were there any
10 work release centers established?

11 A. The work release program was already in existence at the
12 time. Basically what we did is we identified the fact that the
13 classification process that had placed persons in work release
14 was not rigorous enough. So we--I oversaw the reclassification
15 of all inmates currently in the program. In other words, we had
16 a reclassification review on a hundred percent of the inmates.
17 Also, we revised the procedures for the selection of inmates to
18 go into that program.

19 Q. All right. Now, up to now you seem to be concentrating on
20 issues involving inmates being released back into the community;
21 is that accurate?

22 A. That's correct. My office was located in the state
23 pre-release center in Chesterfield, Virginia. Then they had
24 four work release centers across the state in addition to the
25 pre-release center.

1 Q. Chesterfield is a suburb of the City of Richmond; is that
2 correct?

3 A. That's correct.

4 Q. Now, did there come a time when you, because of your work,
5 had an interest in achieving more education in this field?

6 A. Yes. Once I became superintendent of pre-release
7 activities, which oversaw pre-release and work release, I
8 started taking graduate level courses in, actually in planning.
9 The Virginia Commonwealth University where I attended did not
10 have a criminal justice program and it did not have a public
11 administration program, but it did teach some public
12 administration classes under their urban and regional planning
13 development.

14 Q. Virginia Commonwealth University is a university in,
15 essentially, downtown Richmond?

16 A. That's correct.

17 MR. LUCHENITSER: Your Honor, I'm going to make an
18 objection. It seems we have his resume here, I'm not sure what
19 the purpose is of going into his background in this much detail.
20 He's not being offered as an expert.

21 THE COURT: Well, I think by way of background it
22 always helps me when I know something about the witness. I
23 haven't had a chance to read the resume, but I suspect he's
24 hitting the highlights. I'm going to take the testimony.

25 MR. TROY: Your Honor, the reason I was adding these

1 other little matters is just to put it in context for the Court
2 and for the record--

3 THE COURT: Right.

4 MR. TROY: --the location of these places.

5 THE COURT: Right. Mr. Troy, were these LEAA grants?
6 We had a number of them in Iowa. That was the genesis of his
7 beginning work within the Virginia correctional system, I take
8 it?

9 MR. TROY: It was the transfer, in essence, from
10 parole over to the Department of Corrections.

11 THE COURT: All right. Thank you. Proceed.

12 BY MR. TROY:

13 Q. You believe that's accurate?

14 A. That's correct.

15 Q. All right. Did there come a time when--explain to the
16 Court, you were taking courses at Virginia Commonwealth
17 University. Then you ended up I know at the University of
18 Auburn at Montgomery, Alabama.

19 A. One of the professors that I had at VCU became the head of
20 the department of criminal justice at Auburn University, the
21 Montgomery campus of Auburn University.

22 He contacted me after several months and told me that
23 he had a graduate teaching assistantship available and was
24 wondering if I would be interested. I was. In order to get my
25 master's degree I had to do a residency somewhere. It couldn't

1 be at VCU because they didn't have the degree that I was looking
2 for.

3 Basically with the GI bill, and the graduate
4 teaching assistantship, my wife and I relocated to Montgomery
5 and in nine months I finished up my master's degree in criminal
6 justice.

7 Q. And received a master's degree in criminal justice?

8 A. That's correct.

9 Q. And did you also, during that period of time, or shortly
10 thereafter, teach undergraduate courses or do any consulting,
11 and, if so, explain what you did to the Court.

12 A. I did both. I taught undergraduate courses and introduction
13 to corrections and criminal justice, general courses in criminal
14 justice. I taught community-based corrections.

15 The University at the time had a program, a
16 legislative technical assistance program. It was funded by the
17 state legislation. It was a state university. The various
18 state agencies could request technical assistance through this
19 program. The University would put together a team of their
20 faculty and some graduate students, and they would go out and
21 provide whatever consulting assistance was appropriate for the
22 request.

23 I became a part of the corrections team. Since I had
24 had--by that time I had about six years of experience in
25 corrections and the other professors were certainly well

1 qualified, but they had not actually worked in the corrections
2 field. They encouraged me to become a part of that team. I
3 did, I worked on several projects for the state.

4 Q. Now, the State of Alabama?

5 A. That's correct.

6 Q. And during this time did you interface at all with the
7 federal district court for the middle district of Alabama, and,
8 if so, explain that, please, to the Court.

9 A. Yes. I was part of a team that--it was a joint-- May I
10 look at the resume for a second?

11 Q. Certainly.

12 A. I want to get the terms correct.

13 Q. What page are you referencing?

14 A. Six. Yes. I was consultant to the Alabama Department of
15 Corrections to evaluate the inmate--agency's inmate
16 classification system. That was by appointment of a judge of
17 the federal district court, middle district of Alabama.

18 Q. That's a situation where a federal court had a lawsuit
19 regarding prison conditions in Alabama?

20 A. That's correct. I came in as a consultant. I was part
21 of a team that was working on that classification system. I
22 was appointed by the judge to do the evaluation and make a
23 report.

24 Q. All right. Now, where did your career take you next,
25 Mr. Cox?

1 A. After I graduated I was offered a job teaching at the
2 University of Texas in San Antonio as an instructor. I
3 relocated there. That was a new criminal justice program as
4 well. I taught corrections courses and some introductory
5 courses. I was also responsible for managing the intern program
6 where I would work with various criminal justice agencies,
7 including the courts, to place student interns during their
8 junior and senior year in actual agencies to get agency
9 experience.

10 Q. And were you at this time also dealing with release issues,
11 inmates being released back into the community?

12 A. Yes, that's correct. Many of the students worked in both
13 probation and parole agencies. We were very much active in
14 terms of program development in that area.

15 Q. Were you doing grant administration at this time as well?

16 A. Yes. That seemed to follow me about everywhere I went.
17 Once I did that first successful grant application, I think just
18 about every job I have had since then included some form of
19 grant management and grant applications.

20 Q. And did there come a time when you got involved with the
21 local-- How do you pronounce it, Bexar?

22 A. Bexar.

23 Q. B-E-X-A-R is pronounced Bexar?

24 A. That's correct.

25 Q. Bexar County Sheriff's Office?

1 A. Yes. I did some consulting work, through the university,
2 with the sheriff's office on inmate programming.

3 Q. Where is Bexar County?

4 A. San Antonio, Texas. That's the third largest city in Texas.

5 Q. What did you do in relationship to your responsibilities or
6 duties relating to the Bexar County jail system or sheriff's
7 office?

8 A. Well, at that time I did about a three-month study of the
9 program offerings there at the jail. It was very meager. And
10 made a series of recommendations as to how the programming could
11 be improved and expanded.

12 Q. Was that on a consulting basis?

13 A. That was on a consulting basis. That was in the summer.
14 Then the following January the sheriff--I came back from a
15 conference and I had a message from the sheriff. He wanted to
16 meet me at a local restaurant on a Saturday morning, which was
17 very suspicious to me. Anyway, he--I went and met him. He
18 offered me a job as jail administrator.

19 Q. And did you accept that?

20 A. I did.

21 Q. And as a result of being the jail administrator, did you
22 accomplish anything that resulted in recognition through any
23 awards?

24 A. Yes, I did. The county was under conditions of confinement
25 litigation and the sheriff wanted to insure that the jail was,

1 in fact, running appropriately when he went to court regardless
2 of what had happened in the past.

3 As I mentioned, I had done a consulting job on inmate
4 programs. He wanted me to implement those recommendations
5 particularly, and we did so. The following year we were awarded
6 an exemplary award for excellence in jail programming by the
7 American Correctional Association.

8 Q. And is there some significance relating to that award?

9 A. I was very happy with it. The American Correctional
10 Association is the preeminent corrections--professional
11 corrections association in the country. These awards were very
12 prestigious at the time. At the time they did about five, maybe
13 six a year. It got a lot of national recognition and certainly
14 helped my subsequent consulting business very much.

15 Q. And was there anything regarding the basis of that award
16 that related to any programs that you helped implement with the
17 help of volunteers? If so, explain that to the Court.

18 A. One of the reasons it was exemplary is that there were no
19 state or county or federal funds involved. And we had over 200
20 volunteers a week coming in and out of the jail system providing
21 services. Everything from GED instruction to balancing your
22 checkbook.

23 Q. And where did those volunteers come from?

24 A. Well, when I first did the consultant study, and then later
25 became the director of the jail, the San Antonio Council of

1 Churches, which included churches of all denominations in the
2 San Antonio area, were providing chaplains on sort of a rotating
3 basis through the jail system. I went to the San Antonio
4 Council of Churches and challenged them to go back to their
5 churches and recruit volunteers and bring them into the jail to
6 provide services. They responded and they did a fantastic job.

7 Q. Resulting in the recognition by the American Corrections
8 Association?

9 A. That's correct.

10 Q. Is this the first time that you reached out into the private
11 sector to get demonstrable help for an issue that the government
12 couldn't handle by itself?

13 A. No. When I was superintendent of pre-release activities in
14 Virginia, each of my four work release centers and the
15 pre-release centers had a citizens advisory committee. At that
16 time the ACA standards recommended such a committee, and this
17 consisted of leaders from the community, business, government,
18 and religious leaders in the community to sit on the panel and
19 review the program, discuss issues, especially regarding the
20 interface of the program with the community, and make
21 recommendations to me, as the superintendent, as to improvements
22 that could be made to the program.

23 Q. In the San Antonio situation, though, you reached out to the
24 religious community in that instance?

25 A. That's correct.

1 Q. You mentioned a second ago that the award, you felt, was not
2 only prestigious, but assisted you in your consulting business.
3 Can you explain to the Court what that business was and just a
4 little quick explanation of when it started and what you did?

5 A. Well, the sheriff that hired me ran for reelection the
6 second year I was there. He lost in his party's primary. He
7 was--that was in, like, May, I think. The election was in
8 September. He was out in January. The new sheriff wanted a new
9 jail administrator.

10 The county--since I put a little over two years
11 into assisting the county and preparing for the litigation,
12 class- action litigation, the county commissioners retained
13 me as a consultant, and I worked for them about another four
14 years. Basically in that capacity as an expert witness for
15 litigation, and also assisting them in negotiating a consent
16 decree, which included construction of a new 1,700 bed jail
17 facility.

18 Q. What was the name of your consulting business?

19 A. N.R. Cox Associates.

20 Q. And did you serve as an expert witness in any litigation
21 through that consulting business?

22 A. Yes. I had over, I guess, a hundred different jurisdictions
23 that I served over about an eight- or nine-year period.

24 Q. How long were you in that business?

25 A. Eight or nine years. Nine years, I think.

1 Q. '81 to '90?

2 A. That's correct.

3 Q. Okay. So--

4 A. About 18 of those cases involved litigation support, most of
5 which resulted in some type of settlement. But I did testify in
6 five federal district court jurisdictions and was certified as
7 an expert in those cases.

8 Q. And that is five federal district courts?

9 A. That's correct.

10 Q. And is that reflected on Cox 1, if so, can you direct the
11 Court to what page that would be?

12 A. Pages 10, 11 and 12.

13 Q. During this period of time did you consult with state
14 agencies?

15 A. I did.

16 Q. Did you consult with local agencies?

17 A. Yes, I did.

18 Q. Did you consult with federal agencies?

19 A. Yes.

20 Q. What federal agencies?

21 A. Well, late in about '88, '89, it was the U.S. Marshals
22 Service. They were planning to develop two detention facilities
23 just for U.S. Marshal prisons.

24 Prior to that I worked for the National Institute of
25 Justice as a technical assistance consultant. They have what

1 they called a letter grant program whereby a state or local
2 jurisdiction can write a letter to the agency and request
3 assistance. The agency then selects a consultant from a list of
4 persons that they have prequalified and certified, and then
5 sends that person, at no charge to the jurisdiction, to assist
6 with the problem. The federal justice department pays for it.

7 That was through the National Institute of
8 Corrections. I did a lot of work through the national
9 institute--national jail center, also the prison center as well.
10 Q. With respect to the U.S. Marshal Service and their detention
11 centers, where were those to be located?

12 A. One was located--they were going to locate two of them; one
13 in the northeast and one in the Midwest, in Kansas, Leavenworth,
14 Kansas. They only awarded one in Leavenworth.

15 Q. All right. Did there come a time when, after your
16 consulting business, you decided to get into the prison
17 business?

18 A. Private prison business? Yes.

19 Q. Yes.

20 A. I guess about '86 I put together a team and bid on a project
21 in the State of Texas, fairly large project, for pre-release
22 centers across the state. It came in a distant eighth in the
23 field of eight.

24 Q. Eight out of eight?

25 A. Right. I was eight out of eight. At least I got a taste

1 for it. And a few years later, in 1990, I ran into a gentleman
2 who had a good financial background and good credentials in the
3 business community, and the two of us got together and formed
4 our own company.

5 Q. What was that called?

6 A. Initially called Cornell Cox Group. Today it's known as the
7 Cornell Companies. I served as chief operating officer--
8 president/chief operating officer and director from 1990 through
9 1996.

10 Q. And how did that company progress?

11 A. Well, we got a first funding of \$600,000 and we were both
12 just about broke at the time, in December of 1990. When I left
13 in '96 we were generating about 23 million in revenue.

14 Q. And why did you leave in '96?

15 A. The company was getting ready to go public and I had some
16 interest in developing some specialty facilities for geriatric
17 and mentally ill offenders. I wanted to go in that direction
18 and the board of directors felt it was best that I leave before
19 they took the company public rather than after. I agreed. We
20 reached a settlement and I left. I still have done some
21 consulting work with them since.

22 Q. What is the stature or nature of Cornell Companies today?

23 A. It's a publicly-traded stock on the American Stock Exchange.

24 Q. And it constructs and operates private prisons?

25 A. That's correct.

1 Q. And so in '96 you branched off into a new venture
2 institution specializing in geriatric inmates?

3 A. Yes. I did some consulting work in the process because I
4 wanted to have some revenue income. I did some strategic
5 planning for various jurisdictions. I had one two-year
6 consulting job on strategic planning with a county up in
7 New Jersey. I also did some consulting work with other private
8 corrections companies. Over the next six years, or so, I did
9 something for just about every recognized company in the
10 business. The only thing I didn't do well was the geriatric and
11 mentally ill facilities.

12 Q. You were a little ahead of your time?

13 A. That's the way I describe it, yes. I was a little ahead of
14 the time. Actually, I just couldn't get the funding to back it
15 at that time.

16 Q. How long did-- According to your resume, now that's
17 basically '96 to approximately 2003 or '04?

18 A. That's correct.

19 Q. All right. Then there came a time in 2003 when you started
20 to take a look in, and what you did eventually get involved
21 with, the Prison Fellowship Ministries; is that correct?

22 A. That's correct. Yeah.

23 Q. Explain to the Court, first of all, anything--what evolved
24 in your life that made you look in that direction?

25 A. Well, my company was not doing particularly well. I was

1 doing consulting, and that was fine. I just felt like I needed
2 to do something more substantial. My wife and I were
3 participating in a small group and studied--were studying the
4 *Purpose Driven Life* by Rick Warren.

5 Q. Who is Mr. Warren?

6 A. Well, he's an author and pastor, very active in World View
7 Ministry, a Christian ministry.

8 Q. Would he be described as an Evangelical minister?

9 A. I guess some may describe him as that. He's pretty middle
10 of the road if you meet him face to face.

11 Q. What religion are you, Mr. Cox?

12 A. I'm a member of the United Methodist Church.

13 Q. All right. *The Purpose Drive Life*, explain that to the
14 Court a little more and what resulted--how long of a course is
15 it, what impact did it have on you and your family?

16 A. Well, both my kids are grown and off in different
17 directions. My wife and I were a member of a small group. This
18 book was the focal point of what was called the 40 days of
19 purpose. You meet--we met once a week. It took us 40 weeks to
20 go through it. You study a chapter or two each session. And
21 then at the end--it helps you reevaluate where you are in your
22 Christian life. At the end there's a little test that you take
23 and determine how well you're doing on evangelism, service and
24 various aspects of your religious life.

25 My wife and I felt like we needed to expand our

1 service. I started looking for opportunities to do so.

2 Q. So that resulted in a call to service, is that fair to say?

3 A. Yes.

4 Q. As a slight aside, *The Purpose Driven Life*, that's the book
5 that got some notoriety when the prisoner escaped in Atlanta,
6 captured that woman, and she read that book to him?

7 A. That's correct. That's the same book.

8 Q. Having taken this course, how did you come to be involved
9 with the InnerChange Freedom Initiative?

10 A. Actually, I saw an advertisement in the American Corrections
11 Association Journal, which is a magazine, for a national
12 director.

13 Q. What were they advertising for?

14 A. National director of the IFI program. I didn't know what it
15 was at the time. It said if you would like more information go
16 to the web site. I went to the web site, read about it, got
17 interested in it. It said if you want more information send in
18 your resume, and I did. They called me the next day and started
19 the process.

20 Q. Were they looking for someone with a certain type of
21 background?

22 A. Yes.

23 Q. What was that? What did the IFI program need and what was
24 it advertising for in terms of--

25 A. It was specifically looking for someone with a corrections

1 background. Especially someone who had experience in terms of
2 negotiating contracts, administering programs under contract
3 with the state and local governments.

4 Q. And those programs dealt with community release issues?

5 A. Yes, pre-release and reentry.

6 Q. And that's your background; correct?

7 A. That's correct.

8 Q. And as a result of meeting you, what happened?

9 A. They wanted to move a lot faster than I did. It took me a
10 while to get to the point where I was comfortable with it. I
11 had never worked for a nonprofit.

12 I served on a couple of boards of small nonprofits in
13 San Antonio. One was for a juvenile program and the other one
14 was for a tissue bank, but I really didn't have any experience
15 in nonprofits. I certainly had not worked for a ministry
16 before. I wasn't--I was a little cautious at first.

17 Q. What approximate period of time did you first respond or
18 notice the ad that the IFI program had put out?

19 A. I guess it was about six months from the time I saw the ad
20 to the time I accepted the position.

21 Q. And you accepted the position, I think we've established, in
22 February of '04?

23 A. That's correct.

24 Q. So this is sometime, then, in the fall of '03?

25 A. That's correct.

1 Q. But the bottom line is, eventually you became the national
2 director for IFI; is that correct?

3 A. Yes.

4 Q. Who was your predecessor? Who did you replace?

5 A. Jerry Wilger.

6 Q. All right. Then we touched briefly on your duties as the
7 national director. Specifically, how many people report to you
8 and what is the sort of corporate flow chart?

9 A. Well, I'm located in the national office of Prison
10 Fellowship in Lansdowne. Each of the directors of the local
11 programs in Texas, Iowa, Minnesota, Kansas, report directly to
12 me.

13 Q. In Iowa that would be who?

14 A. Dan Kingery.

15 Q. All right.

16 A. Then I have a national program manager, who is responsible
17 for quality control and program audits and who also oversees the
18 startup of new programs.

19 Q. And what is that person's responsibility?

20 A. He oversees the startup of new programs and does program
21 audits and quality control.

22 Q. And do the local directors, such as Mr. Kingery, report to
23 that individual?

24 A. No. That's Sam Dye.

25 Q. Sam Dye is the individual you were just describing?

1 A. That's correct.

2 Q. And is this a new position that you created in terms of--

3 A. It's new in terms of the sense that it's not outsourced.

4 Previously, a consultant team was hired, and that included Jerry
5 Wilger and several other persons. But this is a position that
6 was created, as my position was, my position did not exist
7 within Prison Fellowship, these two positions were created when
8 the decision to stop outsourcing the management was made.

9 Q. So Mr. Dye has audit and programming oversight that he can
10 independently audit; is that fair?

11 A. Yes. We wanted his role to be one of assistance and
12 advisory. Basically what he does is he audits each of the
13 programs and we look for best practices and most successful
14 practices. We bring that back, we review them. We staff them
15 several times through our own staff network. We use resources
16 of Prison Fellowship sometimes to assist in that. If we decide
17 that that's something we should standardize, then we standardize
18 it.

19 Q. So is it fair, then, that the program, you're looking at it
20 constantly and changing it for best practices?

21 A. Absolutely, yes.

22 Q. That is an ongoing activity regardless of this litigation?

23 A. Yes.

24 Q. Who do you report to?

25 A. I report to a senior vice-president in charge of ministry

1 delivery of Prison Fellowship. His name is David Lawson.

2 Q. And then that individual reports to Mr. Mark Early, who is
3 president and CEO--

4 A. That's correct.

5 Q. --of Prison Fellowship Ministry?

6 A. Correct.

7 Q. Let's go to the IFI program itself, if I may. Can you tell
8 the Court the history of the program, its origins?

9 A. Well, the program is modeled on a program that was started
10 in Brazil, San Jose D'Compo, Brazil. In Brazil the legal system
11 is somewhat different than it is here. Once a person is
12 convicted they are sentenced to an institution usually in the
13 geographic region of their home. Each institution is overseen
14 by a member of the judiciary. There's a judge that oversees
15 each prison in a particular jurisdiction.

16 This particular prison was notorious for its high
17 level of violence and crime within the prison. The judge that
18 was overseeing that prison basically said come to me with
19 suggestions and tell me what can be done. Several people came
20 forth with the concept of using the faith-based programming. It
21 ran for several years with volunteers coming in. The program
22 was successful in--with the inmates that were involved, but the
23 prison was still so notorious that it was shut down.

24 Finally, the individual involved convinced the judge
25 to reopen the prison under total control of the religious

1 volunteers. That included everybody in the institution, from
2 security officers to program officers, food service people,
3 everybody. I think food service was still under government
4 control, but most everything else was pretty much volunteer run.

5 Over a period of years that prison just produced--just
6 made a complete turn around. It became one of the most docile
7 prisons in the country and began being replicated throughout
8 Brazil, and today there are over 90 prisons in Brazil that use
9 the same system.

10 No change in inmates, by the way. There was no
11 different population, just a different approach.

12 MR. LUCHENITSER: Your Honor, I'm going to object to
13 that last answer. Lack of personal knowledge. He's talking
14 about something that happened in Brazil before he even got
15 involved with PFM or IFI.

16 THE COURT: Okay. I'll take it subject to your
17 objection.

18 Mr. Cox, when we're talking about this happening in
19 Brazil with the judge, apparently, soliciting many faith-based
20 ideas, when did that happen? Is that in the seventies,
21 eighties, nineties?

22 THE WITNESS: That was the early seventies.

23 THE COURT: By the way, Mr. Troy, was that in the
24 submitted materials on summary judgment? I don't remember any
25 of this.

1 MS. WALLACE: No.

2 MR. TROY: I'm not sure. I don't think so, Your
3 Honor.

4 THE COURT: That's all right. Okay.

5 THE WITNESS: I'm relying on a study that was
6 commissioned in 1991 by the Eckert Foundation.

7 THE COURT: All right. Thank you very much.

8 THE WITNESS: That's the source of my information.

9 BY MR. TROY:

10 Q. You have a copy of that study with you?

11 A. I do, yes.

12 Q. This is part of the material that you studied in order to
13 determine part of your duties and the implementation of the IFI
14 programs?

15 A. That's correct.

16 THE COURT: Back on your record, Mr. Troy, Mr. Early,
17 was he the former attorney general of Virginia?

18 MR. TROY: He was, Your Honor.

19 THE COURT: He lost for governor, if memory serves.

20 MR. TROY: That is correct, Your Honor.

21 THE COURT: All right. Thank you.

22 MR. LUCHENITSER: Again, Your Honor, we would add to
23 our objection that if he is relying on a study, it applies to
24 the best evidence rule. We would also suggest that the study
25 was not introduced as an exhibit.

1 THE COURT: I don't think anybody is relying on it.
2 They are telling me that's the origin of it. I don't suspect
3 you're relying on it, are you, Counsel?

4 MR. TROY: That's right, Your Honor. It's the origin
5 of the program. This individual comes in and has
6 responsibilities, one of the things he does is becomes
7 knowledgeable of what he's there for.

8 THE COURT: Thanks very much. Proceed.

9 BY MR. TROY:

10 Q. There came a time, obviously, when somebody involved with
11 Prison Fellowship Ministry took notice of what the experience
12 was in Brazil and started to try to implement similar programs
13 here in the United States; correct?

14 A. Correct. The justice department organized a team of persons
15 from various aspects of corrections to go down and actually see
16 the program in operation. I don't remember the exact date. It
17 was in the early nineties. We had representatives of Prison
18 Fellowship attend and also other states, federal agencies. One
19 was a representative of the State of Texas.

20 When that trip was completed the individual that
21 represented Texas went back and reported to the governor that he
22 thought it was a worthy program, it could be replicated, and
23 eventually Texas came out with a request for proposal.

24 MR. LUCHENITSER: Again, Your Honor, may I have a
25 standing objection to this whole line of questioning where he's

1 talking about the history of the program and what happened
2 before he joined IFI? It seems to be all hearsay.

3 THE COURT: You may. You may.

4 BY MR. TROY:

5 Q. Mr. Cox, in order to perform your duties as national
6 director of the InnerChange Freedom Initiative, was it incumbent
7 on you to catch up on the past history of the program so that
8 you could learn from the past as to what has to be implemented
9 in the future?

10 A. Yes. When I first took over the program Jerry Wilger sent
11 me about 10 boxes of materials from his office in Colorado. I
12 had to go through every box to see what was in there and see
13 what was worth keeping and what was not worth keeping. A lot of
14 this material was documented in there, and, of course, I read as
15 much as I could to learn about the history of the program.

16 Q. And the program was eventually established, you said,
17 pursuant to an RFP issued by the State of Texas?

18 A. That's correct.

19 Q. Since Texas it has, we know, expanded. Where did it expand
20 to next?

21 A. Iowa.

22 Q. And then?

23 A. Kansas.

24 Q. And then?

25 A. Minnesota.

1 Q. And next?

2 A. Arkansas and Missouri.

3 Q. Where does-- Let me back up.

4 It came to Iowa, we know, in--Your Honor, I'll just go
5 through this quickly, because I think it's in the record. In
6 the fall of 1998 there was an RFP, a contract issued in the
7 spring of 1999, and implementation of the Iowa program in the
8 fall of 1999.

9 A. Yes, that's my understanding.

10 Q. What is the IFI relationship with Prison Fellowship
11 Ministry, Mr. Cox?

12 A. Prison Fellowship Ministry originally started the IFI
13 program in 1997 in Texas. Then I believe it was '98--excuse
14 me--'99 that IFI was separated from Prison Fellowship and
15 incorporated as a separate 501(c)(3) organization with its own
16 board of directors.

17 Then IFI entered a series of agreements with Prison
18 Fellowship to provide staffing and support services for the
19 program.

20 Q. How would you describe Prison Fellowship Ministry, is it, in
21 essence, a ministry?

22 A. Yes.

23 Q. And the InnerChange Freedom Initiative, I think you just
24 said a moment ago has separate articles of incorporation.

25 A. That's correct.

1 MR. TROY: Your Honor, I believe that's Exhibit A.
2 I'm not going to go into a lot of detail, but I would, if I
3 might, direct the Court to Exhibit A.

4 THE COURT: All right. That's fine. Thank you.

5 BY MR. TROY:

6 Q. In the articles of incorporation for the InnerChange Freedom
7 Initiative, is it stated in there that rather than a ministry,
8 that its goal, one of its goals, is the reduction of recidivism?

9 A. That's correct.

10 MR. LUCHENITSER: Do you have a page number,
11 Mr. Troy, for that cite?

12 MR. TROY: No.

13 BY MR. TROY:

14 Q. All right. You're familiar with various contracts that
15 emanated between the InnerChange Freedom Initiative and the
16 State of Iowa?

17 A. Well, historically I have a record of them, and just
18 recently responded to a request for proposal.

19 Q. Those were in '98, 2002, and the most recent one was 2005,
20 this year?

21 A. Yes. That's correct.

22 Q. What is it that-- You have in the separate articles of
23 incorporation for InnerChange Freedom Initiative, one of the
24 goals is reduction of recidivism. How does InnerChange Freedom
25 Initiative approach the recidivism issue as compared to other

1 programs?

2 I ask it because we've heard a lot in the course of
3 testimony between a therapeutic versus a transformational model.
4 Can you, first of all, explain to the Court the differences
5 between those models, and then I want to go into issues
6 involving recidivism.

7 A. Well, the two models are very similar in many ways. I'll
8 focus on the differences as opposed to the similarities. A
9 therapeutic model uses some type of treatment effect to change
10 behavior. The transformational model uses the purposeful
11 introduction of religion as the change agent. It also focuses
12 on teaching religious values.

13 The purpose is to change the way people behave, to
14 restore the family, to restore the individual to the community,
15 not only as a crime-free citizen, but also as a person who gives
16 back to the community, be a productive citizen. Recidivism is
17 the way we measure the success of the program.

18 Q. You mentioned change agent. Can there be various change
19 agents other than religion?

20 A. Yes. There are all types of change agents. It depends
21 on--as a matter of fact, the IFI program is a holistic program
22 in the sense that we recognize that individuals can change and
23 do change, but we also recognize that they have to have the
24 skills that they need to cope despite what happens inside.

25 Q. And in responding to the State of Iowa for a values-based

1 program, was the IFI view of that request a transformational
2 program?

3 A. Well, we responded to the RFP as it was stated, a
4 values-based program. Transformation is the process or the
5 treatment effect that we use to bring about that result.

6 Q. To bring about the values that you're trying to accomplish?

7 A. Right. That's correct.

8 Q. And the change agent that you use to accomplish the
9 acquisition of these values is a religious component; correct?

10 A. That's correct. The original study in '91 of Brazil, one of
11 the greatest criticisms of the Brazil program was--I'm sorry--
12 it wasn't a criticism, it was a characteristic, was that it was
13 holistic. It not only included religion, but it included a
14 broader service area. That was replicated in this country.

15 What we know about what works in corrections is that
16 all change is a uniquely personal process. Whether it's a
17 spiritual transformation or whether it's simply internalizing
18 values, the individual has to make the choice, first, that they
19 want to change, and, secondly, that they want to use this
20 process to change.

21 Some programs rely on, say, psychotherapy, which is
22 one of the most sophisticated. A lot of people aren't
23 comfortable with the exploration of the inner-self at the depth
24 that psychotherapy requires in order to make change.

25 They steer away from those types of programs and go to

1 less intrusive programs like social work counseling or cognitive
2 therapy of some type that's less intrusive. Our therapy, for
3 example, I've heard people credit their changed lives to the
4 fact that they were given opportunity to discover art and
5 discover a method of expressing themselves.

6 We introduce religion because we, as Christians,
7 believe that the only true change and lasting change occurs
8 through spiritual transformation, but we don't require it. We
9 don't compel it. We don't track it. It would be foolish to try
10 to do so.

11 Q. Why?

12 A. Why? Well, a person can verbally say yes, I have been
13 transformed or I have been changed, but you have no way of
14 measuring that or determining whether that's true, or not.

15 We teach values from a Christian perspective, which
16 includes the spiritual side of the Christian religion, which
17 includes the transformation through the spirit, and we also
18 teach the values that you should live by as a Christian, and
19 then we measure behavior. Because behavior is what reflects the
20 change.

21 Secular research tells you that one of the first signs
22 of a changed individual has nothing to do with the source of the
23 change, but one of the first signs of a changed behavior is
24 respect for authority. They change the way they relate to
25 authority.

1 As a matter of fact, if you look at the
2 sexual--secular literature, and especially the what works
3 literature, that tells you any successful program has to include
4 these five, six or seven things, you'll basically see that the
5 IFI program follows that research very, very closely.

6 MR. LUCHENITSER: Objection, Your Honor. I'm going to
7 object to him talking about literature that is not before the
8 Court. He's not an expert. It's hearsay under the best
9 evidence rule.

10 THE COURT: Okay. I'll take it subject to your
11 objection. Proceed.

12 MR. TROY: Thank you, Your Honor.

13 BY MR. TROY:

14 Q. Do you rely on any secular authorities in the implementation
15 of the overall IFI program?

16 A. Well, that's my background. I mean, I've worked in
17 corrections for 32 years before coming to Prison Fellowship and
18 IFI. Part of my master's degree training was in statistics.
19 Not that I would be a statistician, but I would be an informed
20 consumer of research.

21 I followed the literature for years and I've
22 contributed to it in some small way myself.

23 Q. And identify, if you would, for the Court some of the
24 literature that you rely upon in implementing the IFI program,
25 the secular literature.

1 A. I looked--of course, we use recidivism, which is a standard
2 measure of success. I looked at what is the so-called what
3 works literature. This emerged, like, in the early 1990's.
4 It's basically secondary research. In other words, it's not
5 primary research in corrections, but it's a review of all
6 research, all social science research, which includes, like,
7 research on the family, research on employment, and other types
8 of research that tells you what makes the successful--how an
9 individual makes a successful adjustment to society.

10 We collect that information in corrections and distill
11 it down to several principles. I don't necessarily do it, but
12 there are several distinguished authors who have done so.
13 Basically it becomes the focal point of guidelines for
14 developing new programs and to evaluate programs.

15 I know I've mentioned to you the American Correctional
16 Association several times, but they have two conferences a year,
17 and much of that conference time is involved in workshops, and
18 this literature is very thoroughly reviewed and discussed among
19 professionals in the community.

20 Q. Let me go back to that literature in a moment. With regard
21 to the American Corrections Association, in your background were
22 you involved actively on any standing committees of that
23 association?

24 A. In the seventies and early eighties I was very, very active
25 in committees with the American Corrections Association, program

1 committee, for about three years, three or four years straight.

2 I was involved in bringing some of these authors to
3 the workshops and seminars. But also I was on the adult
4 detention committee and chaired that committee for several
5 years. But then in '83 I was elected president of the American
6 Jail Association--'81, I was elected president elect and then in
7 '83 I became president. I focused my attention in that
8 direction the balance of the eighties instead of the ACA.

9 Q. Some of the secular literature that you rely upon, we've
10 discussed authors Bush and Milladew (phonetic).

11 A. Yes.

12 Q. Explain to the Court those individuals.

13 MR. LUCHENITSER: Your Honor, I'm going to object.
14 This seems to call for expert testimony. He's--this individual
15 has never been disclosed as an expert. The rules require
16 experts to be disclosed before trial. It seems a lot of what
17 he's testifying to is really what you would--it's really expert
18 testimony.

19 We would ask that his examination be confined to the
20 actual facts that he knows, based on his experience, starting in
21 2004, about the operation of the IFI program.

22 THE COURT: Okay. I'll take your objection, and I'll
23 treat Mr. Troy's testimony here as an offer of proof.

24 MR. LUCHENITSER: Okay. I'll have a standing
25 objection to this whole line of questions.

1 THE COURT: Yes. Yes.

2 BY MR. TROY:

3 Q. Mr. Cox, let me ask you this: When you started in February
4 of 2004, did you have any past involvement in the corrections
5 system or did you just start on a clean slate not knowing
6 anything when you took office in February of 2004?

7 A. It was just the opposite. I had 32 years of professional
8 experience in corrections. And then I had no experience in
9 nonprofit or ministry.

10 Q. And did you bring that 32 years of experience to your job
11 when you came in 2004?

12 A. I did. They were looking for someone with my background.

13 Q. And--

14 A. And that's what I brought.

15 Q. --with that background and experience did you, in dealing
16 with the corrections system and community, return to community
17 issues, rely on certain secular authorities?

18 A. Yes. I brought with me the literature and research and the
19 experience that I had come to rely on in my 32 years of
20 corrections.

21 Q. And what you're using, as you've indicated, what works best
22 are initiatives and changes that you're implementing in the
23 InnerChange Freedom Initiative program?

24 A. Yes.

25 Q. And that includes where we were a second ago, authors Bush

1 and Milladew (phonetic)?

2 A. Yes. It actually started with Genlo and Drews (phonetic) in
3 1990. They came up with five attributes associated with
4 criminal behavior and recidivism. Basically they said any
5 program that's going to be successful in addressing recidivism
6 and changing criminal behavior had to deal with these five
7 issues.

8 Q. Which were?

9 A. They were, one, antisocial attitudes, values and beliefs,
10 which basically they characterize as criminal thinking. This is
11 the thinking that I'm a victim. It's not my fault. It's
12 society's fault, or it's my parents fault, or it's the
13 authorities fault, or somebody else's fault. In other words,
14 I'm a victim of my circumstances, and, therefore, I commit
15 crimes as a result of that. That's pretty much what's described
16 as criminal thinking.

17 The other attribute is that they generally have
18 criminal associates. In other words, other people that think
19 the same way. It need not be a gang, but it may be. It may be
20 family members. A lot of offenders come from families that have
21 a history of criminal activity.

22 Also, the third is particular temperament and behavior
23 characteristics. For example, egocentrism, whereby you look out
24 for No. 1. You constantly look out for No. 1. That tends to be
25 a characteristic. Weak problem solving and social skills and

1 criminal history rounds out the first five.

2 Since then other offices have attributed several more.
3 One being negative family factors, low levels of vocational and
4 educational skills, and substance abuse. The most recent, since
5 2000, we've added an element of procedural justice and the
6 community model of resocialization.

7 Q. Can you explain a little more what you mean by that?

8 A. Well, procedural justice is what I referred to earlier about
9 respect for authority. One of the components of procedural
10 justice is that criminals will respond better to punishment or
11 discipline if it's delivered in a respectful manner. Even if
12 it's harsh discipline or harsh sentencing, if they are treated
13 with respect in the process, they take it better.

14 The corridor is once they begin to change, that's the
15 first behavior that they change in terms of their respect for
16 authority. They begin to demonstrate that respect.

17 The community model of resocialization was--has always
18 been with us, but it highlighted in the mid-nineties. And that
19 basically is where you bring people that are experiencing a
20 common problem together in a housing unit, for example, where
21 they live together so that the learning process continues after
22 class stops.

23 If they spend three-and-a-half, four hours a day in
24 class, they go back to the dorm, or back to the housing unit, or
25 back to the day room and they sit there and talk about it,

1 sometimes they argue about it, but they learn from it.

2 That's the social learning model, social theory of
3 learning. Many programs, whether it's substance abuse or
4 whatever, rely on the community model as a part of the learning
5 process.

6 Then the alignment of services with the types of
7 greatest risk. The Bureau of Justice statistics report that of
8 all persons released from prison in this country, 30 percent are
9 rearrested within six months. One of the things that we do in
10 every reentry program is we front load the services.

11 In other words, that first six months they get a lot
12 of attention, a lot of intensive service because we know that
13 that's when they are at their greatest risk for reoffense.
14 After three years it's only 67 percent. Almost half of that
15 occurs in the first six months.

16 That's what I mean about going to the secular
17 literature and looking at the program and seeing what we're
18 doing right and what we're doing wrong. That's what I focus on.
19 That's what Sam and other directors focus on because we want to
20 make sure that we address these attributes.

21 IFI does that. We go directly to the criminal
22 thinking issue. We go there with Christian principles and we
23 teach them that they can live a different life, and that life of
24 service is better than egocentric thinking.

25 They talk about it. They explore it. They determine

1 whether or not that's something they want to do.

2 Q. They explore it in a community model--

3 A. Yes.

4 Q. --of resocialization?

5 A. Yes, in the congregate living area.

6 Q. Is that like in Iowa, Texas, and others, the program is all
7 under one roof?

8 A. Correct. That's the primary reason, yes.

9 Q. All right. So the IFI program, then, based on secular
10 literature, has that implementation, which I guess we can call
11 No. 2, which is the community aspect.

12 A. Right.

13 Q. And then you just mentioned the third part, which is
14 assignment of service once individuals are released back into
15 the community?

16 A. That's correct.

17 Q. Does the IFI program use the words front load?

18 MR. LUCHENITSER: Objection; leading.

19 THE COURT: Overruled.

20 A. Yes. We begin the process six months prior to release. We
21 begin release planning. Every individual makes their own
22 personal plan for release. It includes a plan for housing, a
23 plan for work, a plan for restoration of family. They are
24 assigned a mentor to work with them one-on-one. We try to keep
25 that same mentor with them throughout the 12 months after they

1 are released.

2 We look at these attributes, the fact that--we talk
3 with the inmates about the negativity of pro-criminal
4 associates. That's one of the reasons we try to hook them up
5 with a church as quickly as possible, because then they have
6 positive role models to replicate rather than negative role
7 models. It gets them into a new prosocial environment. It may
8 seem pretty tame in terms of church suppers and Bible studies,
9 but it fills a void, and these individuals have experienced that
10 while in prison. It's a continuation of the programming, the
11 values-based program that we introduce them to while they're in
12 the prison program.

13 Weak problem solving. We try to address those through
14 both our classes and in coaching sessions, as well as small
15 group sessions. Many of our volunteers come in in the evening
16 and work with them on these types of skills.

17 The family is an extremely important factor. Most of
18 the individuals that we work with have been alienated from their
19 families for years. That's a source of pain and discomfort to
20 them. Many of them would like to go back to their families and
21 sometimes their families won't have anything to do with them.
22 We try very hard to reconcile the individual with the family
23 months before they are released. Many of our programs include
24 marital counseling and marital seminars and family counseling of
25 all types.

1 Whether they are alienated from parents, or siblings,
2 or spouse and children, we try to address that. The research
3 tells us that persons who have strong family support continue to
4 do better in the community after release than those who do not.
5 The same thing with substance abuse, it may be common sense,
6 those that are abusing substances don't do as well as those that
7 are substance free.

8 BY MR. TROY:

9 Q. Mr. Cox, with regard to the goals of IFI and using the
10 transformational model, change criminal thinking, is it
11 necessary in this transformational model that there be a
12 conversion to Christianity?

13 A. We, as Christians, believe that, but as far as the program
14 goes, it does not.

15 Q. Is a conversion to Christianity required for an IFI inmate
16 for enrollment?

17 A. No.

18 Q. For progression through the program?

19 A. No.

20 Q. Or for graduation from the program?

21 A. No.

22 Q. Is there a necessity for enrollment progression or
23 graduation, for an IFI inmate to demonstrate a conversion from
24 antisocial behavior to prosocial behavior?

25 A. Yes. That's the way we measure success.

1 Q. And are these based on what the record has already
2 indicated, the six core values of the IFI program; integrity,
3 restoration, affirmation, productivity, reconciliation and
4 fellowship?

5 A. Yes.

6 Q. Are these exclusive values, exclusively Christian values in
7 your mind?

8 A. No, certainly not. We teach them in the context of
9 Christian religion and it's Bible based. We go to the Scripture
10 for examples of these values. There are many stories in the
11 Bible that illustrate these Christian values, as we consider
12 them, but they are not unique to Christians by any stretch of
13 the imagination.

14 THE COURT: Mr. Troy, I need to give the reporter a
15 break. We'll be in recess until 25 minutes to 11:00.

16 (Recess.)

17 (In open court.)

18 THE COURT: Mr. Troy, I think when I interrupted you
19 you were talking about the transformational model with the
20 witness.

21 MR. TROY: Yes, sir, Your Honor. I believe I had
22 finished that. I hope I had. There was a necessity to progress
23 in a change of attitude.

24 THE COURT: Right.

25 MR. TROY: But not a necessity to convert to

1 Christianity.

2 THE COURT: Right.

3 BY MR. TROY:

4 Q. Mr. Cox, in trying to accomplish the goals of the IFI
5 program, in using the change agent that you testified to, and
6 the secular authorities that you also rely upon, is there any
7 other source or single source to revalidate the type of programs
8 that are necessary to achieve the changes that you're attempting
9 to make?

10 A. I try to get as much of the IFI staff involved with the
11 American Correctional Association as possible. Because there
12 is--there are a lot of workshops on reentry. As a matter of
13 fact, the American Correctional Association has just come out
14 with a new book on what works in reentry. I have given them all
15 a copy of that. I want them to keep abreast of the literature.
16 And, as I said, we are in the process of continuing reviewing
17 the program for best practices. I want them to know what to
18 look for.

19 Q. Do you happen to recall the name of this most recent
20 publication?

21 A. I believe it's *What Works in Reentry*.

22 Q. And are things working in the IFI program? In other words,
23 are you seeing the results of the program, and, if so, please
24 let the Court know what they are.

25 A. Yes. We see it at many different levels. Initially when

1 the program goes in it's usually treated with some suspicion,
2 and, perhaps, even some disregard by many of the corrections
3 officers. After a few months the inmates start saying yes,
4 ma'am, and yes, sir, to them, and they have a different attitude
5 towards the program. Many officers see it as a good place to
6 work and apply for transfers to come into the unit because there
7 are fewer fights, there are fewer arguments, there is very
8 little theft.

9 There is still some of that that goes on, especially
10 with the newer members, but by in large the inmates in the
11 program are much better behaved institutionally and exhibit much
12 more respect for authority.

13 It goes beyond that. Because once they are released
14 into the community, we find that those who have participated in
15 the in-prison program do very well in terms of national
16 statistics, national averages in terms of rearrest or
17 reincarceration.

18 MR. LUCHENITSER: Objection, Your Honor. There is no
19 foundation for this testimony, talking about recidivism data,
20 there is--he's not an expert. There is no foundation.

21 THE COURT: I think he's relating anecdotal, what he
22 claims is anecdotal evidence, and I will give it the weight I
23 think it's entitled to. I assume, perhaps, there is an opinion
24 that's forthcoming.

25 MR. TROY: In a second, Your Honor.

1 BY MR. TROY:

2 Q. Are you receiving reports of similar attitudinal changes in
3 the Iowa program?

4 A. Yes.

5 Q. And in response to His Honor's statement a second ago about
6 empirical studies, would that emanate from the study done in the
7 Texas program?

8 A. Yes. The Texas program is the study that was highly
9 publicized and structured as closely as possible to a resources
10 design. Its results showed very favorable precision.

11 MR. LUCHENITSER: I'm going to object. The Texas
12 study has not been designated as an exhibit by the defendants.
13 Any testimony about it should not be admissible. He's not
14 designated as an expert.

15 THE COURT: It will go to weight. I will receive the
16 testimony. Continue.

17 BY MR. TROY:

18 Q. You are familiar with that study?

19 A. I am, very.

20 Q. You are familiar with some criticisms with regard to that
21 study as well?

22 A. Yes, I am. I happen to defend it constantly.

23 Q. What is your overall analysis, based on your background,
24 experience, and the need to perform your duties as national
25 director of IFI regarding that Texas study?

1 A. Well, I looked at it very closely. I think the conclusions
2 about--I think many of the criticisms are valid as well.

3 Q. Let's go a step at a time. What are the conclusions?

4 A. Well, the conclusions are that rearrests and
5 reincarcerations are lower for the IFI graduate than for a
6 controlled group that was structured to have similar
7 characteristics.

8 MR. LUCHENITSER: Again, Your Honor, may I have a
9 standing objection about this testimony? Hearsay, best evidence
10 rule.

11 THE COURT: You may.

12 BY MR. TROY:

13 Q. Were those results demonstrably lower for IFI?

14 A. Yes, they were.

15 THE COURT: Mr. Luchenitser, I don't think there are
16 any secrets here. I have read the same law review articles
17 about the empirical evidence probably that you have.

18 MR. LUCHENITSER: I think that's correct, but the
19 defendants consciously did not designate this study as an
20 exhibit. I don't think it should be--everybody knows about it,
21 but they didn't designate it. I don't think it should be
22 considered.

23 MR. TROY: I wasn't sure how many additional trees we
24 needed here, Your Honor.

25 THE COURT: Okay. Proceed.

1 BY MR. TROY:

2 Q. The--you indicated that there were some criticisms with
3 regard to the study.

4 A. Yes. Selection bias was one.

5 Q. What do you mean by that? Explain your view of that.

6 A. Well, in order to have a pure research design, then you
7 should take your experimental group and your control group, you
8 should select them both randomly so that there is absolutely no
9 selection bias. It's impossible to do in a program where people
10 volunteer.

11 Q. Why?

12 A. Because you have to say to half of them, "Okay. Now that
13 you have volunteered, you go into the controlled group, you
14 don't get any treatment." It's just not something that's
15 acceptable in terms of programming. If it's voluntary, it
16 should be voluntary. If the inmates meet the criteria, they
17 should be allowed in. You can't deny them treatment in order to
18 experiment on them. At least from an ethical standpoint you
19 shouldn't do that.

20 Texas inmate selection bias was there. You do have
21 people that want to change. You do have people that have
22 decided to change, and you do have people that have chosen this
23 method of change to take place. There is a selection bias.

24 But most other secular programs run into the same type
25 of bias to a lesser extent, I'd say. To some extent it's all

1 human service. All research involving humans runs into that
2 same difficulty.

3 Q. Let me change the subject now. You indicated that you were
4 familiar with the contracts that existed or were entered into
5 between Iowa and the Department of Corrections and the IFI
6 program, 1998 and 2002. You were not involved with those;
7 correct?

8 A. No. No.

9 Q. But you did have involvement in the 2005 building process?

10 A. I did. I also--the program extended in '04, that was part
11 of the previous award. The state had the authority to extend an
12 additional year.

13 Q. And they did?

14 A. Yes.

15 Q. All right. And--

16 A. There were some amendments to that contract.

17 Q. Well, let me ask you with regard to one of the amendments.
18 You should have in front of you, I believe, defense Exhibit X5
19 in those books.

20 MR. TROY: Your Honor, may I approach?

21 THE COURT: You may.

22 BY MR. TROY:

23 Q. I'm sorry. Our label on the front was confusing.

24 Do you have Exhibit X5 in front of you, Mr. Cox?

25 A. I do.

1 Q. And can you identify that document for the Court, please?

2 A. Yes. This is a cover letter transmitting the IFI response
3 to the--well, actually regarding a memo to the contract.

4 Q. And what is the nature of the--does this relate to the
5 extension of the contract in the year 2004?

6 A. Yes. That's correct.

7 Q. And what is the nature of the amendment that is being
8 implemented in June of 2004?

9 A. The method of compensation was changed.

10 Q. From what to what?

11 A. From a quarterly payment to a per diem payment.

12 Q. And was the quarterly payment based on a per diem concept?

13 A. No. It was one-fourth of the annual appropriation.

14 Q. Based on an approximation or anticipation of X number of
15 inmates in the program?

16 A. That's correct.

17 MR. LUCHENITSER: Objection; leading.

18 THE COURT: Overruled.

19 BY MR. TROY:

20 Q. And Exhibit X5 goes to what? Because if I say it goes to a
21 pure per diem, which would save the Court time, Mr. Luchenitser
22 is going to object as leading.

23 A. Well--

24 MR. LUCHENITSER: Objection; leading.

25 THE COURT: Overruled.

1 A. Basically we wanted to go to a more equitable method of
2 billing. One that we could document in terms of service level.
3 Per diem rate does that. For each individual in the program we
4 charge a rate of \$3.47 per day for each day that they are in the
5 program up until they complete the 18-month in-prison program.

6 Once that's completed we no longer charge the state
7 because they are no longer providing them with the program that
8 we contracted to provide. They might stay in the housing area,
9 they may give an orientation to new inmates coming in, they may
10 assist with some of the classes, but we don't charge the state
11 for those inmates because they are now contributors to the
12 program and not receiving the program.

13 BY MR. TROY:

14 Q. And the inmates that are in the last phase in the community,
15 you indicated a six-month, or more, program?

16 A. That's correct. We follow them for 12 months.

17 Q. Is there a per diem charge for those individuals?

18 A. Yes, there is.

19 Q. Okay. But overall cost per day for IFI to implement the
20 program, can you estimate for the Court what that is? Is it
21 more than \$3.47?

22 A. Yes. I don't know what the per diem is, but it's much more
23 than that. That should equal about 35 or 40 percent of the
24 total cost. Now that I think about it, I don't believe we do
25 bill for aftercare services on a per diem basis.

1 Q. All right. With respect to--once the contract was extended
2 to 2004, did there come a time when the state issued a request
3 for proposal in 2005?

4 A. Yes. I think it was April or early May.

5 MR. TROY: I believe the record would show May 4, Your
6 Honor.

7 BY MR. TROY:

8 Q. Did you have any communications with the Department of
9 Corrections in Iowa regarding that RFP before it was issued?

10 A. No.

11 Q. Did you have any meetings with any individuals with regard
12 to representing the State of Iowa before that RFP was issued?

13 A. Yes, but not related to the RFP. It was related to my
14 supervisory and management duties in IFI. When I go to the unit
15 I try to make the courtesy call on the warden if he or she is
16 available.

17 Q. That is who?

18 A. Terry Mapes in Iowa.

19 Q. And so you met him how many times before that RFP was
20 issued?

21 A. I don't recall just in passing.

22 Q. Did you have any discussions of any nature with him relating
23 to the reissuance of the RFP?

24 A. No.

25 Q. The record shows that a Jeanette Bucklew was also involved

1 in the issuance and analysis of the responses to this RFP. Do
2 you know Ms. Bucklew?

3 A. Yes, I do.

4 Q. And did you meet-- How do you know her?

5 A. Well, she issued the RFP. She is the DOC procurement
6 officer and all responses had to go through her. As a matter of
7 fact, we were prohibited from talking to any other member of the
8 Department of Corrections during this process once the RFP was
9 issued. Everything has to go to her in writing. Verbal
10 communication is not accepted.

11 Q. Did you have any meetings with Ms. Bucklew prior to the
12 issuance of the RFP?

13 A. No.

14 Q. Had you ever met Ms. Bucklew prior to the issuance of the
15 RFP?

16 A. No, never heard of her.

17 Q. Did you meet her in person once the RFP was issued?

18 A. I did, but it was in conjunction with this trial, not in
19 conjunction with the RFP.

20 Q. She testified here. Prior to seeing her here at trial, had
21 you ever met her in person?

22 A. No.

23 Q. You submitted a bid in response to the request for proposal?

24 A. Yes, we did.

25 Q. And you are familiar now that you had a competitive bid from

1 a company called Emerald?

2 A. Yes, I am aware of that.

3 Q. Had you heard of or were you aware of Emerald Corporation
4 prior to their response to the Iowa RFP?

5 A. Yes. They interviewed me several years ago as a consultant
6 on a geriatric facility that they were considering undertaking.
7 They didn't hire me though.

8 Q. From your background and education, are you familiar with
9 something on an economic principle called the first of the
10 market theory?

11 A. Yes.

12 Q. Explain to the Court what that is.

13 A. Well, it's basically--

14 MR. LUCHENITSER: Objection. Calls for more expert
15 testimony. He's not an expert.

16 THE COURT: It does seem to me that it's expert
17 testimony. Is--I thought he was giving me background in the IFI
18 program. Is that something that's unique?

19 MR. TROY: Yes, sir, it is, in relationship to some of
20 the bidding process and his knowledge of how he works in his
21 job.

22 THE COURT: Okay. Overruled. You can answer.

23 A. Well, basically my experience has been in public corrections
24 and private corrections. Private corrections, as a consultant
25 and later as part of a private corrections company that managed

1 jails and prisons under contract with the government.

2 In the early eighties the first company to do this was
3 Corrections Corporation of America. They had to go out and sell
4 the concept and then sell themselves. They were selling two
5 different things. The rest of us came lately and were able to
6 provide some competition. But for several years the first of
7 the market was out there by themselves and there was no
8 competition.

9 Many states were reluctant to advertise for bids
10 knowing that only one company would respond. Other states felt
11 like it was an appropriate thing to do because it generated--it
12 would generate competition eventually if they put out these
13 RFPs.

14 BY MR. TROY:

15 Q. And the reason it generates competition is people start
16 realizing there is a market out there?

17 A. There is a market, right. In private corrections, like the
18 first award, I think, was made in '82 or '83, and I cofounded
19 that company in 1990. We were about the sixth or seventh,
20 eighth firm, I guess, in the market at that time.

21 Q. Now, the amount of money that you responded to--the amount
22 of your bid in response to the Iowa RFP was, I believe,
23 \$310,000.

24 A. Well, we proposed a per diem rate, as we had previously, not
25 to exceed \$310,000.

1 Q. And what is the status-- Well, let me back up a moment.

2 Did you monitor, or anyone on behalf of IFI monitor,
3 the appropriations process here in the State of Iowa?

4 A. Well, when I was preparing the proposal I wanted to know
5 what was appropriated. I don't remember whether it was Sam or
6 Rod Brouwer, but somebody got a copy of the appropriations bill
7 and told me what was in it.

8 Q. And that information was public information?

9 A. Well, I think it was. I don't remember if it was.

10 Q. It was a--

11 A. The Tobacco Fund. Anyway, they went to public documents to
12 get the information to know how much was available.

13 Q. To your knowledge, could anybody have done that?

14 MR. LUCHENITSER: Objection; leading.

15 MR. TROY: If you know.

16 THE COURT: Overruled.

17 A. Yes, I think so. The state has that information available
18 through their web site.

19 BY MR. TROY:

20 Q. Let me show you, if I may, Exhibit T. I believe you should
21 have that in front of you, Defendants' Exhibit T.

22 MR. TROY: May I approach, Your Honor?

23 THE COURT: You may.

24 BY MR. TROY:

25 Q. Mr. Cox, do you have in front of you what has been marked as

1 Defendants' Exhibit T?

2 A. Yes, I do.

3 Q. Can you identify that document for the Court?

4 A. It's a notice of intent to award dated July 14th signed by
5 Jeanette Bucklew.

6 Q. And is that the notice that you became aware of?

7 A. That's the hard copy, yes.

8 Q. All right. Is this the official notice to IFI?

9 A. Yes, it is.

10 Q. And as a result of that notice, have you been negotiating a
11 contract for a values-based program as advertised in the RFP?

12 A. Yes, we have.

13 MR. LUCHENITSER: I'm sorry to interrupt. What
14 exhibit are we looking at?

15 MR. TROY: T.

16 MR. LUCHENITSER: That says the notice is to Emerald
17 Companies.

18 MR. TROY: I'm sorry. Your Honor.

19 MR. ALLEN: You're looking at S.

20 THE WITNESS: It's U. No, T. Correct.

21 MS. WEAVER: Our S.

22 BY MR. TROY:

23 Q. Mr. Cox, go back, if you would, to Exhibit T, Defendants'
24 Exhibit T. It's a document on the State of Iowa Department of
25 Corrections letterhead; is that correct?

1 A. Yes. That's the one I'm looking at.

2 Q. What is the date of the document?

3 A. July 14th--

4 Q. And--

5 A. --2005.

6 Q. And it is--it's a notice of intent to award; is that
7 correct?

8 A. That's correct.

9 Q. Who is it addressed to?

10 A. InnerChange Freedom Initiative.

11 MR. LUCHENITSER: The one in our set, the exhibits
12 were transposed. It doesn't matter. Don't worry about it.

13 THE COURT: Mr. Troy, I have a question. I have
14 Volume V, my Exhibit T6 through U6. Is there a T that I should
15 have?

16 MR. TROY: Yes, there is, Your Honor.

17 MS. WALLACE: Volume II, Your Honor.

18 THE COURT: Volume II. Thanks very much.

19 All right.

20 BY MR. TROY:

21 Q. Mr. Cox, I think what I was asking you is, as a result of
22 receiving the notice of intent to award, what is the status of
23 the contract negotiations that emanated from that notice?

24 A. A final draft has been sent to Ms. Bucklew for review,
25 approval and execution.

1 Q. With regard to the RFP process that took place, are you
2 familiar with a process in that--in the RFP called a technical
3 assistance workshop?

4 A. Yes. That's like a pre-bid conference.

5 Q. And to your knowledge, was anybody from IFI present and
6 representing IFI at that conference?

7 A. I believe Chris Geil represented IFI at that conference.

8 Q. And that conference is open to any interested bidder?

9 A. Yes.

10 Q. And you indicated that the contract has been forwarded for
11 review and approval and execution. What is the manner of
12 payment that's set forth in that document?

13 A. It is a per diem.

14 MR. LUCHENITSER: Objection; best evidence rule. We
15 would like to see the actual document instead of having somebody
16 testify about what it says.

17 THE COURT: Overruled.

18 A. It's a per diem payment, \$3.47.

19 BY MR. TROY:

20 Q. The same as or similar to what we looked at as Exhibit X5?

21 A. That's correct.

22 THE COURT: Mr. Luchenitser, wasn't that in your
23 stipulation?

24 MR. LUCHENITSER: The stipulation covers the most
25 recent contract that goes up to June of 2005. We haven't seen

1 this new draft contract they're talking about.

2 THE COURT: But it's the same concept.

3 MR. LUCHENITSER: That's what they're saying. We
4 can't stipulate to that because we haven't seen it.

5 THE COURT: Okay. Thanks very much.

6 MR. TROY: The document isn't finalized, Your Honor,
7 so the best evidence is right now.

8 THE COURT: All right.

9 BY MR. TROY:

10 Q. Let me change to one final question--or series of questions,
11 Mr. Cox, and that is the issue of what I would phrase
12 recoupment. How much money has IFI received, if you know, from
13 the State of Iowa for services since its initial contract in
14 1999?

15 A. I don't know precisely, but it's just under \$2 million, \$1.9
16 million.

17 Q. And did IFI provide services to the State of Iowa Department
18 of Corrections in return for that money or consideration?

19 A. Yes, in accordance with the contractual relationship.

20 Q. And were those services provided in good faith?

21 A. They were.

22 Q. Are you aware that the plaintiffs in this case have a claim
23 of recoupment?

24 A. Yes, I am.

25 Q. What would the impact be on IFI, its programs throughout the

1 United States, if it had to return the approximate \$1.9 million
2 to the State of Iowa.

3 MR. LUCHENITSER: Objection; relevance.

4 THE COURT: Overruled.

5 A. Well, the current budget for the four active IFI's is a
6 little over \$3 million a year. The majority of that we raise
7 through donations. It would be a pretty drastic impact to take
8 two-thirds of that--to have to return two-thirds of that to the
9 state.

10 BY MR. TROY:

11 Q. Which would impact programs not only in Iowa, but in the
12 other locations in the United States?

13 A. Right. You add the other two locations and you're talking
14 about close to \$4 million. It's about half of what it takes us
15 to operate in six states for a year.

16 Q. Has the State of Iowa asked IFI to return any money or asked
17 for any recoupment?

18 A. Not to my knowledge, no.

19 Q. To your knowledge does the Department of Corrections in
20 Iowa feel that it's received value for the money it's paid to
21 IFI?

22 A. My experience is that--

23 MR. LUCHENITSER: Objection. He can't testify to what
24 the Department of Corrections--

25 THE COURT: Sustained.

1 BY MR. TROY:

2 Q. Well, in that relation, is the State of Iowa negotiating and
3 coming to finalization of a new contract with IFI for the same
4 or similar services that it's been providing since 1999?

5 A. Yes. We were very pleased that they chose us to continue
6 the service over a very well qualified firm.

7 MR. TROY: Thank you, Your Honor. I have no further
8 questions.

9 THE COURT: Okay. Thank you.

10 Is there cross-examination?

11 MR. LUCHENITSER: Yes, Your Honor.

12 MR. ALLEN: Your Honor, I think it would make more
13 sense if I ask my couple of questions and then go to him.

14 MR. LUCHENITSER: No objection, Your Honor.

15 THE COURT: That's fine. Mr. Allen.

16 MR. ALLEN: I only have a few.

17 CROSS-EXAMINATION

18 BY MR. ALLEN:

19 Q. Mr. Cox, to clarify, the \$3.47 per diem is per inmate, is it
20 not?

21 A. That's correct.

22 Q. And that \$3.47 is for services provided to those inmates
23 while they are in the 18-month program housed in Cellhouse E at
24 Newton; correct?

25 A. That's correct, for 18 months.

1 Q. So that when they complete that 18-month or 12-month program
2 and yet continue to live in Cellhouse E, they are not--the State
3 of Iowa is not billed?

4 A. That's correct.

5 Q. And if and when they are released from Newton and they
6 receive the benefits of your 12-month aftercare program, the
7 State of Iowa is not billed?

8 A. I believe you're correct.

9 Q. And then just to clarify, on the annual budget, I believe
10 you said you received a little less than \$2 million. That's
11 from the inception of the contract to date, is it not?

12 A. Correct.

13 Q. The annual budget from--you receive from Iowa on an annual
14 basis is about how much, if you know?

15 A. About 300,000 from Iowa--\$310,000, I believe.

16 Q. Do you know the annual budget for IFI for Iowa total?

17 A. Close to 800,000.

18 Q. 800,000?

19 MR. LUCHENITSER: I'm going to object. There's
20 specific exhibits that show that. I'm going to object. Best
21 evidence.

22 THE COURT: Which exhibit is it, Mr. Luchenitser?

23 MR. LUCHENITSER: Taking a couple of minutes to find
24 it. But there is--actually, there's--it's also in the
25 stipulations. Stipulations have got some stuff about the

1 annual--

2 MR. ALLEN: Your Honor. That's fine. If there's
3 stuff in the stips, that's fine with me. I have no further
4 questions.

5 MR. LUCHENITSER: All right. Thank you.

6 My apologies.

7 CROSS-EXAMINATION

8 BY MR. LUCHENITSER:

9 Q. Let's see. Mr. Cox, I believe you testified that you are an
10 employee of Prison Fellowship Ministry; is that correct?

11 A. That is correct.

12 Q. And is it correct that you have authority over IFI?

13 A. That is correct.

14 Q. And I believe you testified that the each local director of
15 the four current IFI programs report to you; is that correct?

16 A. That's correct.

17 Q. So is it correct that you're the boss?

18 A. I'm one of the bosses. I have to report to someone as well.

19 Q. Okay. Is it correct that they have to do what you tell them
20 to do?

21 A. Generally, yes. They don't always, though.

22 Q. If they don't do what you tell them to do, is that-- Are
23 they expected to do what you tell them to do?

24 A. Yes, they are.

25 Q. And I believe you testified that there's a--what is Sam

1 Dye's title again?

2 A. National program manager--director. I'm sorry. National
3 program director.

4 Q. Is it correct that he's an employee of IFI?

5 A. No. He's an employee of Prison Fellowship.

6 Q. And is he--do you expect him to do what you tell him to do?

7 A. Yes. I usually tell him to advise me.

8 Q. Is it correct that PFM has the final say over all of the
9 decisions that involve hiring or terminating IFI staff?

10 A. No. Well, I do. I mean, at the vice-president's level I
11 have hiring and firing authority.

12 Q. You have authority over who the IFI local offices hire and
13 fire?

14 A. Well, the local director makes the decision, I approve it,
15 it also goes through human resources.

16 Q. Uh-huh. And then do you have the right--do you have the
17 authority to disapprove a hiring or firing decision made by a
18 local director as to the IFI staff?

19 A. I do.

20 Q. Now, is it correct that all IFI staff are actually employees
21 of PFM?

22 A. Yes, that's correct.

23 Q. And is it correct that all IFI staff are paid by-- Let me
24 rephrase that question. Is it correct that all IFI staff
25 receive their paychecks from PFM? PFM cuts the payroll for the

1 IFI staff?

2 A. Yes. In accordance with an agreement between IFI and PFM to
3 provide those staffing and support services.

4 Q. And is it correct that PFM appoints IFI's board of
5 directors?

6 A. No. That's not correct. They appoint three members, I
7 think.

8 Q. How many members are there?

9 A. Nine, I believe. I'd have to go back and look.

10 Q. Do you know how the other six are appointed?

11 A. The board recruits them.

12 Q. So the board appoints itself?

13 A. Well, usually, yes. They recruit members.

14 Q. They recruit them and then they--the current board votes on
15 who the six other members are going to be?

16 A. Well, it doesn't usually occur that way. It usually occurs
17 one vacancy at a time, sometimes two vacancies at a time.

18 Q. So for the six members of the board that are not appointed
19 directly by PFM, whoever is on the board at that time selects
20 the remaining members one or two at a time?

21 A. I'd really have to go back and look at the bylaws to answer
22 that. I'm not sure exactly how that process works.

23 Q. Do you know how all of the IFI board members were originally
24 appointed?

25 A. No.

1 Q. You don't know whether they were all originally appointed by
2 PFM?

3 A. Do I know that?

4 Q. Were they all originally appointed by PFM?

5 A. I don't know. I'd have to go back and research that. I'm
6 sure I've read it somewhere, but I don't recall the details.

7 Q. I'm going to hand you an exhibit binder.

8 MR. LUCHENITSER: May I approach, Your Honor?

9 THE COURT: You may.

10 MR. LUCHENITSER: Hopefully the cord will be long
11 enough that I'll actually be able to get there.

12 BY MR. LUCHENITSER:

13 Q. If you could flip to Exhibit 136, please. First, can you
14 tell me what this document is?

15 A. Financial statement for the years ending June 30, 2004 and
16 2003, with independent audit report.

17 Q. This is for InnerChange Freedom Initiative?

18 A. It's for the InnerChange Freedom Initiative. It's from
19 Fitzgerald, Snyder and Company, PC, certified public
20 accountants.

21 Q. Do you believe the information in this document to be true
22 and correct?

23 A. I do.

24 Q. And I'm just going to draw your attention to page 6 of this
25 document, also Bates stamped 777. If you look at the bottom

1 there, related parties, it says in the first paragraph, "Members
2 of IFI board of directors are currently appointed by PF." Does
3 PF refer to Prison Fellowship?

4 A. I'm sorry. Say that again. I was reading.

5 Q. Does PF, when the abbreviation PF is in this document, does
6 that refer to Prison Fellowship?

7 A. Yes.

8 Q. Do you have any reason to disagree with that statement in
9 that document, "The majority of the members of IFI's board of
10 directors are currently appointed by PF"?

11 A. I don't have any reason to disbelieve it at all.

12 MR. LUCHENITSER: Okay. Your Honor, I'm going to
13 refer you to stipulations 132 through 134 for additional
14 information about the relationship between Prison Fellowship
15 Ministries and InnerChange Freedom Initiative.

16 BY MR. LUCHENITSER:

17 Q. I'm going to hand you another exhibit binder.

18 MR. LUCHENITSER: I apologize, Your Honor, I lost--
19 the mic came off.

20 MR. TROY: Can we know what exhibit we have?

21 MR. LUCHENITSER: Sure. I'm about to tell you. It is
22 Exhibit 47.

23 BY MR. LUCHENITSER:

24 Q. Have you been able to find it?

25 A. Yes, Break Point Online, Every Day Miracles.

1 Q. Can you tell me what Break Point Online is?

2 A. Yes. It's an online version of the radio commentary by
3 Chuck Colson.

4 Q. And is this something that's published on Prison Fellowship
5 Ministry's web site?

6 A. Yes. You have access to it through the web site.

7 Q. And is Prison Fellowship, do they produce this program or
8 are they involved in it somehow?

9 A. Break Point?

10 Q. Yes, sir.

11 A. Yes. That's the world view out of the Prison Fellowship
12 Ministry.

13 Q. Let's go on to-- I'm not sure if you have this in your
14 binder, or not. You should have it in the same binder. Exhibit
15 72. Can you tell me what this document is?

16 A. It's Form 990, the Internal Revenue Service.

17 Q. And is this something IFI filed with the IRS?

18 A. I don't have any firsthand knowledge of it, but it looks
19 official.

20 Q. And would the information in here be true and correct?

21 A. I can't testify to that. This is in 2003. I wasn't here
22 then.

23 Q. Well, it says for calendar year beginning July 1, 2003, and
24 ending June 30, 2004. Since it covers the period ending June
25 30, 2004, would it be reasonable to assume it was filed after

1 you became employed by Prison Fellowship?

2 A. That is reasonable to assume, yes.

3 Q. And would it be reasonable to assume that IFI would not file
4 something with the IRS unless the material in the document was
5 true and correct?

6 A. I think that's reasonable to assume, yes.

7 Q. And if you look at the third page of this document, which is
8 Bates stamped PFM702--PFM/IFI702.

9 A. Right.

10 Q. At the top there's a statement of organization's primary
11 exempt purpose. Is it correct that that explanation of the
12 organization's primary exempt purpose is, quote, "To convey the
13 ministry and provide evangelical participation to prisoners"?

14 A. That's what it says.

15 Q. Let's--

16 MR. LUCHENITSER: May I give him another exhibit
17 binder?

18 THE COURT: You may.

19 BY MR. LUCHENITSER:

20 Q. This next exhibit is going to be Exhibit 80.

21 A. Did you say 80?

22 Q. Yes, 80. I'll wait for you to get there.

23 A. I'm there.

24 Q. Can you tell me what this document is?

25 A. Handbook for employees of Prison Fellowship Ministry.

1 Q. Are employees of PFM expected to follow what it says in this
2 handbook?

3 A. Yes, by in large they are.

4 Q. And are there any exceptions?

5 A. I don't have the handbook memorized. Is there something in
6 particular you want me to comment on?

7 Q. You said by in large they are. Was there something that you
8 were thinking of?

9 A. There are some exceptions in terms of employment processes,
10 recruitment, things of that nature.

11 Q. Are employees of IFI also expected to-- Let me try to
12 rephrase it.

13 You testified before that IFI staff are employees of
14 PFM.

15 A. That's correct. But they are assigned a hundred percent of
16 their time to support the IFI program.

17 Q. So are IFI staff expected to follow the--what it says in
18 this handbook, that's Exhibit 80?

19 A. It is with some exceptions. For example, recruitment is
20 handled differently for IFI than it is for Prison Fellowship
21 Ministry in general.

22 Q. Can you think of any exceptions that relate to IFI staff
23 from this handbook other than relating to recruitment?

24 A. I would have to go through the handbook in some detail to
25 tell you that. I don't have it memorized. I guess through

1 their table of contents I could look through that. I don't see
2 a table of contents here.

3 Q. Let me ask you about page 4 of the handbook. Is it correct
4 that page 4 of this handbook, what's stated on page 4, is fully
5 applicable to IFI staff?

6 A. Generally I'd say that the IFI staff supports the mission of
7 Prison Fellowship, but our mission is somewhat different, that's
8 why it's a separate 501(c)(3) organization.

9 Q. Are IFI staff expected to--where it says, "Our core values,"
10 that section, are IFI staff expected to follow those values?

11 A. We have a different set of core values because we have a
12 contractual relationship with state government, and our scope is
13 much narrower than the scope of Prison Fellowship Ministry.

14 Q. Of these core values listed on this page 4, are there any
15 specific ones that IFI staff don't have to follow or believe in?

16 A. Well, I don't require them to recite them or give any
17 allegiance to them per se. This is a handbook they are given to
18 read and review. I can't tell you if all of my IFI members
19 adhere to this. Generally, I think they do support the Prison
20 Fellowship mission and core values.

21 Again, we have a little bit of a different focus. We
22 don't focus on these core values, we focus on a different set of
23 values in terms of conducting the IFI program.

24 Q. Is it correct that IFI believes in these values also?

25 MR. TROY: Your Honor, I'm sorry. I didn't understand

1 the question.

2 BY MR. LUCHENITSER:

3 Q. Is it correct that you expect IFI staff to believe in these
4 seven values?

5 MR. TROY: Asked and answered.

6 A. I make no such requirement, no.

7 THE COURT: Overruled.

8 Mr. Luchenitser and Mr. Troy, I've treated them as one
9 in the same for purpose of the lawsuit. Do I make a mistake
10 when I do that?

11 MR. LUCHENITSER: I think that's correct.

12 MR. TROY: I believe you do make a mistake when you do
13 that.

14 THE COURT: Will you clarify that for me at some point
15 because I thought they both had the same type of beliefs and
16 ministry.

17 His statement that it's more narrow, narrow only in
18 the sense of delivering services, but the philosophy that
19 underlies both organizations, I took to be the same.

20 MR. TROY: I think the document that is before the
21 Court right now reflects a core mission of the Prison Fellowship
22 Ministry, which is a ministry. It is a true ministry as opposed
23 to the IFI program, which, as the evidence indicated, under its
24 articles of incorporation, it's purposes are to reduce
25 recidivism. It uses the core values of integrity, et cetera,

1 that we've gone over to instill a change. I think that's what's
2 happening. Mr. Luchenitser, obviously, tries to suggest that
3 they are one in the same. They are separate corporations.

4 THE COURT: I know they are separate corporations. I
5 thought their religious philosophy, in terms of what they
6 believed in, was the same. I thought the difference was IFI
7 provided services to now six states, or proposed to. That was
8 the only difference. It was a legal difference.

9 MR. TROY: Respectfully, Your Honor, it would be a
10 scenario where if PFM goes into a prison, it's going in through
11 a chaplain, see, aspect. IFI is going in as independent
12 contractor to provide a certain service, reduction of
13 recidivism, using a values-based approach from a faith-based
14 change agent.

15 THE COURT: Which they derive from Prison Ministry.

16 MR. TROY: Which they derive from the values that we
17 articulated in the IFI program, the six values, which don't
18 necessarily--aren't necessarily inconsistent with, but not
19 synonymous with the core values that Mr. Luchenitser is now
20 asking about.

21 MR. LUCHENITSER: Your Honor, would you like me to
22 briefly state my position on this issue?

23 THE COURT: I would because I'm confused.

24 MR. LUCHENITSER: While IFI is separately
25 incorporated, we think that that's just really a legal shell,

1 and, perhaps, they did this for some legal reason, perhaps to
2 shield them from liability. We don't know why. We think that
3 the matters that I have been going through with Mr. Cox for--the
4 beginning of this cross-examination, show that PFM really
5 controls IFI. Mr. Cox is a PFM officer and he has full
6 authority over the IFI staff.

7 PFM pays IFI employees. PFM actually provides IFI
8 funding if it doesn't come from the state. We think it's really
9 one in the same.

10 THE COURT: Mr. Troy thinks otherwise.

11 MR. LUCHENITSER: Yes.

12 MR. TROY: One is a religious program and one is a
13 treatment program.

14 THE COURT: Okay.

15 BY MR. LUCHENITSER:

16 Q. Mr. Cox, is there a separate employee handbook for IFI
17 staff?

18 A. We have an operating manual and Field Guide.

19 Q. Okay. The operations manual, is the one you mentioned?

20 A. We have an operations manual and a Field Guide.

21 Q. And are IFI staff expected to follow what is stated in the
22 operations manual?

23 A. Yes.

24 Q. Now, is it correct that you have been working on a new
25 version of the operations manual?

1 A. Well, we're revising it. This is, I think, the fifth
2 revision. It's something that we do periodically to make sure
3 that the operating manual reflects what's actually happening on
4 the ground. When we make changes, and we do several times a
5 year, then we want to--we go back and make sure that the manual
6 reflects those changes. When we start a new program, like in
7 Arkansas, we start off with all the lessons learned rather than
8 part of the lessons learned.

9 Q. Mr. Cox, if you could please flip to Exhibit 76. It will be
10 in one of the binders that you have in front of you.

11 A. Yes. This is the fourth edition of the operations manual.

12 Q. Is this the most recent version that's been completed?

13 A. This is the one that's been completed. We have a new
14 version, but it hasn't been completed. We're still working on
15 the appendices.

16 Q. And are IFI staff expected to follow what's stated in this
17 fourth version at this point in time?

18 A. Yes, basically they are. But the director has some
19 discretion.

20 Q. Let me go back to Exhibit 80, page 4, the core values at the
21 bottom, page 4. Would you approve hiring somebody to be a staff
22 person for IFI if they indicated that they did not agree with
23 one of the values listed on page 4?

24 A. That's not part of my interview process, no. That's not
25 part of my process.

1 Q. But if you knew that they didn't agree with one of these
2 values, would you agree to hire them?

3 A. Since I don't require it, I wouldn't know. It's not
4 something that I can answer for you. I mean, if they told me
5 that they did not believe in Jesus Christ I would say, "You're
6 probably in the wrong place because this is a Christian
7 ministry." If they said they don't read the Bible, I don't
8 think I would hire them. If they said they didn't--they weren't
9 dependent on prayer, I would advise them to be. I don't know
10 that I would stop the hiring process.

11 Anchored in the church simply means Prison Fellowship
12 works through the church as its source of volunteers, and its
13 source of support for prisoners in the community.

14 Committed to Christ, I would not include that in an
15 employment interview. Compelled to evangelize, I would not
16 include that in the interview. Focus on all people, we have a
17 very narrow focus. I wouldn't include that in an employment
18 interview. Seeking excellence, I would say yes, that's
19 something I would look at. No, I would not use all of these to
20 screen an employee.

21 Q. Let's go on to Exhibit 81. Can you tell me what Exhibit 81
22 is?

23 A. Prison Fellowship employee process and procedures, last
24 updated 7-29-05.

25 Q. And are PFM employees expected to follow these policies and

1 procedures?

2 A. Yes.

3 Q. And are IFI staff expected to follow these policies and
4 procedures?

5 A. Yes. Again, I would have to go through them and look at
6 them individually. I think generally that's correct.

7 Q. Okay. I will take you through these one by one.

8 A. Okay. That's fine.

9 Q. We didn't include the whole exhibit in this exhibit binder.
10 I believe that the whole thing should be in the one that's
11 called Plaintiffs' Complete Exhibits, that separate binder. Let
12 me ask you about the ones included in here.

13 Are IFI staff expected to follow this first policy
14 here, Policy No. EMP1, statement of faith?

15 A. Yes. They are required to accept the statement of faith and
16 sign it that they accepted.

17 Q. And let's go on to the next one. Are IFI staff expected to
18 follow this Policy No. EMP15, section employment entitled
19 homosexuality?

20 A. Yes. It's inconsistent with Christian values. We're
21 teaching Christian values.

22 Q. And let's go down to the next one, EMP16, section employment
23 entitled employment of ex-prisoners. Are IFI staff expected to
24 follow this policy?

25 A. I'd have to look at that in more detail to see. This one

1 seems to be somewhat lengthy. It's, like, two pages. If you
2 will give me a moment, I will look it over.

3 Q. Okay.

4 A. I would say probably not because most of our departments of
5 corrections will do a background check and they have their own
6 requirements in terms of whether or not sex offenders can--what
7 period of time they have to be out, if any.

8 Q. What about the section on page 2 of this policy where it
9 says personal life. Are IFI staff expected to abide by that
10 policy?

11 A. Where specifically on page 2 are you referring?

12 Q. Near the bottom there's a section called personal life.

13 A. Yes. IFI is a Christian program. We are Christians. We
14 would like to see them set the example for the inmates that they
15 work with. This would be something that we encourage and
16 require.

17 Q. And let's go on to the next--

18 A. Encourage, the policy says encourage.

19 Q. Let's go on to the next section, the next policy, policy
20 EMP17, section ministry relations entitled government funds. Is
21 this a policy that's applicable to IFI and its staff?

22 A. No. This is particularly--this is one of the reasons IFI is
23 a separate entity, because you will notice the last bullet there
24 says, "The combined funds received by PF and its affiliates from
25 all government sources will not be more than 10 percent." Well,

1 in Iowa it's around 40 percent and Kansas, I think it's, like,
2 27 percent, and Minnesota it's about 22 percent. I think we
3 exceed that in IFI.

4 Q. Now, does this policy--this might actually help address an
5 issue Judge Pratt was asking about before--the next paragraph,
6 after the last bullet point, if you look at that paragraph,
7 there's a sentence that says, "In each instance funds will be
8 accepted from a government entity only as a result of a policy
9 of exception based on the above criteria and for a specific
10 program or service that can be administered through a separate
11 501(c)(3) corporation, established and controlled by PF for that
12 purpose, transition of prisoners, InnerChange Freedom
13 Initiative."

14 Does this policy help explain why IFI was established
15 as a separate 501(c)(3)?

16 A. This paragraph, I think, grants an exception to IFI.

17 Q. Right.

18 A. The purpose of this policy is so that Prison Fellowship does
19 not become dependent on federal funds. If it were dependent on
20 federal funds, and those funds dried up for some reason,
21 Congress decided to cut back on those types of programs, it
22 would be difficult to replace a large amount of funds. It's
23 been restricted to 10 percent so that in the event Congress or
24 state legislators, or whatever, decide not to fund these types
25 of programs anymore, then it would be--would be a minimal effect

1 on the overall position.

2 Q. So IFI, one of the subsidiaries of PFM, has been given an
3 exception from this policy based on the specific criteria set
4 forth in this?

5 A. I think--

6 MR. TROY: Object to the form of the question. It
7 assumes facts that IFI is a subsidiary where the evidence shows
8 to the contrary.

9 THE COURT: You can answer. Overruled.

10 A. I didn't quite get the question. Would you repeat it,
11 please?

12 THE COURT: He used the term subsidiary. He used IFI
13 is one of the subsidiaries.

14 You go ahead, Mr. Luchenitser.

15 MR. LUCHENITSER: Actually, if the court reporter
16 could read that back, I might not be able to phrase it the same
17 way.

18 THE COURT: Don't use the term subsidiary, that's what
19 I was suggesting. I think that was his objection.

20 BY MR. LUCHENITSER:

21 Q. Is IFI one of the entities that's been given exception from
22 this policy, pursuant to its terms, one of separate entities
23 related to PFM? That's been given exception to this policy, but
24 implemented pursuant to this paragraph that follows the bullet
25 points?

1 A. It appears so from this paragraph.

2 Q. Let's go to the last policy, policy MR31, section ministry
3 relations, entitled theological review.

4 Is it correct that this is a policy that is applicable
5 to IFI staff?

6 A. Yes. This is consistent with IFI's nondenominational
7 nature. The theoretical--the theological committee reviews
8 materials that are used to make sure that it's consistent and
9 does not reflect the doctrine of any one denomination, but is a
10 mainstreamed Christian doctrine.

11 Q. Now, the materials do have to be consistent with the PFM
12 statement of faith; isn't that correct?

13 A. That's correct.

14 Q. So they do have to reflect the views--they do have to
15 reflect certain specific Christians views, that's correct;
16 right?

17 A. Yes. That's correct. That statement of faith was drafted
18 to represent mainstream Christian beliefs.

19 Q. Now, you're aware that there are many Christians--you're
20 aware that there are many Christians who don't agree with at
21 least some of what's in the statement of faith, are you not?

22 A. I imagine there are some, yes.

23 Q. But it's your opinion that the statement of faith sets forth
24 the mainstream Christian views?

25 A. Yes.